IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WA.NO. 1574 OF 2014 ()

AGAINST THE JUDGMENT DATED 17-10-2014 IN WP(C).NO.17607/2014.
.....

APPLICANTS/RESPONDENTS 1 AND 2 IN WP(C).:
----

1. **STATE OF KERALA,**
   REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
   DEPARTMENT OF HEALTH & FAMILY WELFARE,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

2. **THE DIRECTOR OF MEDICAL EDUCATION,**
   THIRUVANANTHAPURAM.

   BY GOVT. PLEADER SRI.ROSHEN D.ALEXANDER.

RESPONDENTS/PETITIONERS & ADDL. RESPONDENTS 3 TO 5 IMPLEADED IN WP(C).
----

1. **MUSLIM EDUCATIONAL SOCIETY,**
   KOZHIKODE, REPRESENTED BY ITS GENERAL SECRETARY,
   PROF. P.O.J. LABBA, PIN-673 004.

2. **DR.P.A. FAZAL GAFOOR,**
   S/O. LATE DR.P.K. ABDUL GAFOOR, PADIYATH HOUSE,
   KANNUR ROAD, KOZHIKODE-673 004.

3. **M E S DENTAL COLLEGE,**
   PERINTHALMANNA, PALACHUVADU. P.O.,
   MALAPPURAM DISTRICT,
   REPRESENTED BY ITS DIRECTOR
   DR.P.A. FAZAL GAFOOR, PIN-679 338.

4. **THE KERALA UNIVERSITY OF HEALTH SCIENCES,**
   REPRESENTED BY ITS REGISTRAR,
   MEDICAL COLLEGE. P.O.,THRISSUR-680 596.

5. **UNION OF INDIA,**
   REPRESENTED BY ITS UNDER SECRETARY,
   MINISTRY OF HEALTH AND FAMILY WELFARE
   (DENTAL EDUCATION SECTION), NIRMAN BHAVAN,
   NEW DELHI-110 002.

6. THE SECRETARY,
DENTAL COUNCIL OF INDIA, AIWAN-E-GALIB MARG,
KOTLA ROAD, NEW DELHI-110 002.

R1 TO R3 BY ADVS. SRI.BABU KARUKAPADATH,
SMT.M.A.VAHEEDA BABU,
SRI.K.A.NOUSHAD,
SRI.P.U.VINOD KUMAR,
SRI.KANDAMPULLY RAHUL,
SRI.MITHUN BABY JOHN,
SRI.J.RAMKUMAR.
R4 BY ADV. SRI.P.SREEKUMAR, SC.
R5 BY ADV. SRI.N.NAGARESH, ASSIST. S.G. OF INDIA.
R6 BY ADV. SRI.TITUS MANI VETTOM, SC.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15/12/2014, ALONG WITH W.A. NO.1711 OF 2014, THE COURT ON 06/01/2015 DELIVERED THE FOLLOWING:

rs.

WA.NO. 1574 OF 2014

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE I	**COPY OF THE FORM OF ESSENTIALITY CERTIFICATE IN FORM NO.4 AS PER REGULATION 6(2)(E) OF DENTAL COUNCIL OF INDIA.**
ANNEXURE II	**COPY OF THE JUDGMENT IN WP(C).NO.29092/2011 DATED 10/11/2011.**
ANNEXURE III	**COPY OF THE LETTER NO.DE-22-2011 DATED 04/07/2011.**

RESPONDENT'S ANNEXURES:-

ANNEXURE R1B	**COPY OF THE ORDER DATED 24/07/2014 IN I.A. NO.10014/2014 IN WP(C).NO.17607/2014 OF THIS HONOURABLE COURT.**
ANNEXURE R2A	**COPY OF THE LETTER DATED 08/08/2013 OF DENTAL COUNCIL OF INDIA.**
ANNEXURE R2B	**NIL.**
ANNEXURE R2C	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 20/06/2014 ISSUED TO MALABAR DENTAL COLLEGE AND RESEARCH CENTER, MALAPPURAM.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * * *
W.A.Nos.1574 & 1711 of 2014

Dated this the 6th day of January 2015

J U D G M E N T

Shaffique,J

These appeals have been filed against the judgment dated 17/10/2014 in W.P.C.No.17607 of 2014 of the learned Single Judge.

2. W.A.No.1574/2014 is filed by respondents 1 and 2 in the writ petition namely State of Kerala and Director of Medical Institution. W.A.No.1711 of 2014 is filed by the writ petitioners. Parties are hereinafter referred to, as described in the writ petition.

3. The writ petition is filed for a direction to the 1st respondent to issue essentiality certificate to the 3rd petitioner for starting MDS course in eight specialties, in terms of their application, Ext.P2 and for other consequential benefits including a direction to the Central Government to receive back the application along with documents returned

by them and to consider the same in accordance with the procedure prescribed.

4. The brief facts involved in the writ petition is that the 3rd petitioner college applied for essentiality certificate to the Government for starting MDS courses in eight specialties, in its Dental College which has an intake of 100 students for BDS course. According to the petitioners, all inspections having been completed long back, the essentiality certificate had not been issued.

5. An application for starting a higher course of study or new course has to be submitted to the Central Government, along with the essentiality certificate from the Government, the consent to affiliate from the University etc. The petitioners submitted an application dated 25/6/2014 to the Central Government for permission to start MDS courses in eight subjects in the 3rd petitioner college for the academic year 2015-16 in anticipation that they will be able to produce the essentiality certificates without further delay.

3rd Petitioner college had also applied to the University for consent for affiliation for starting the aforesaid courses. According to the petitioner, the consent for affiliation will be granted by the University only after the essentiality certificate is issued by the State Government. Petitioners contended that they have applied for essentiality certificate from State Government as well as consent for affiliation from University much prior to the last date for submitting application to the Central Government but the respective authorities have not issued the same.

6. Petitioners allege that the 1st respondent did not issue the essentiality certificate since the petitioners failed to enter into an agreement with the Government in relation to seat sharing in their colleges. The Central Government by Ext.P17 dated 24/7/2014 called upon the petitioner to pay an additional amount of Rs.1 lakh per course and also to submit essentiality certificate from State Government and 'consent for affiliation' from the University by 28/7/2014. Petitioner

submits that the additional amount claimed had been remitted to the Central Government under cover of their letter dated 30/7/2013 produced as Ext.P19.

7. During the pendency of the writ petition, the State Government produced letter dated 11/8/2014 (Ext.P20) indicating the deficiencies in the 3rd petitioner, Dental College for issuing the essentiality certificate. Petitioner impugns the said decision as well.

8. It is inter alia contended that as far the essentiality certificate is concerned, State Government's power is only very limited. As per regulations, they have to verify whether the site or location is suitable for a college and whether the clinical materials are available for conducting the course. There is no other jurisdiction vested in the State Government. It is contrary to the aforesaid regulations that the State Government had issued Ext.P20 stating that there are large scale deficiencies in the college for issuing the essentiality certificate.

9. Counter affidavit is filed by the 1st respondent inter alia stating that essentiality certificates are issued after ensuring that adequate facilities in terms of infrastructure are available in an institution for conducting the course. According to the 1st respondent, it is not an empty formality. As far as the writ petitioner's claim is concerned, it is submitted that on receiving the application, for essentiality certificate to start MDS courses in eight specialties the Government issued directions to the Director of Medical Education to conduct inspection and to report whether there exists adequate staff strength and infrastructure facilities for commencing new MDS course. It is stated that the report was not obtained by the Government and on receipt of the same further action will be taken.

10. 2nd respondent filed a counter affidavit stating that the 3rd petitioner college has submitted an incomplete application before the DCI without producing the essentiality certificate from the State Government and consent for

affiliation from Kerala University of Health Sciences. It is further stated that in 2013, the college had applied for increase in seats from 50 to 100 for BDS for the academic year 2014-2015, which was granted by the Government. It is submitted that there is significant difference in the DCI requirements in regard to staff, the number of clinical materials etc. for 50 and 100 student strength. Such an aspect was not considered by the inspectors especially in regard to clinical materials by way of patient attendance. Therefore the Director of Medical Education is bound to adhere to the norms for 100 BDS admissions along with requirements of three MDS seats in each of the eight specialties from 2015. It is further stated that inspection report received from the Principal of the Government Dental College, Kozhikode were assessed based on the DCI requirements for 100 BDS admissions and those prescribed for three MDS seats in each of the eight specialties to which the petitioner had applied. Reference is made to R2(d) letter

dated 22/11/2014. It is stated that the Government has to take a final decision in the matter. The inspection reports prepared by Professors of Government Dental College, Kozhikode is produced as Ext.R2(e).

11. On the aforesaid pleadings, the learned Single Judge formed an opinion that there are only two conditions to be complied by a College for issuance of essentiality certificate. The first one is that there is no objection in regard to the proposed site and the second is regarding availability of adequate clinical materials. Such factors alone is required to be considered by the Government and if the materials are available to indicate that the site is non-objectionable and there are sufficient clinical materials nothing prevents the Government from issuing the essentiality certificate. It is therefore found that when sufficient clinical materials are available for 100 undergraduate seats, the same clinical material was enough for the post graduate seats as well. In that view of the

matter, it was found that non-issuance of essentiality certificate to the petitioner was arbitrary and unjustified. Hence direction was issued to the 1st respondent to issue essentiality certificate to the college as requested in Ext.P2 application within a period of 10 days. Further the 3rd respondent University was directed to issue 'consent for affiliation'. However, the learned Single Judge declined to direct the Central Government to receive back the application for further processing on the ground that last date fixed under the regulations cannot be extended, the same being on 31/07/2014.

12. It is impugning the direction to issue essentiality certificate that the State has come in appeal and the writ petitioners have filed the appeal challenging the refusal of the learned Single Judge in declining the relief for a direction to the Central Government to consider their application on merits.

13. Heard the learned Senior Government Pleader

Sri.Roshen D.Alexander, Sri.Babu Karukapadath appearing on behalf of the writ petitioners, Sri.Titus Mani Vettom learned standing counsel for DCI, Sri.N.Nagaresh appearing on behalf of Union of India and Sri.P.Sreekumar learned Standing Counsel appearing on behalf of Kerala University of Health Sciences.

14. The questions involved in the Writ Appeal are two fold. One is whether the learned Single Judge was justified in directing the State Government to issue essentiality certificate and the University to issue 'consent for affiliation'. The second issue is whether a direction can be issued to the Central Government to consider the application of the petitioner despite the fact that the time for submission of the application has already expired.

15. Learned Government Pleader made specific reference to the DCI Regulations as well as the format for issuing the essentiality certificate. It is not in dispute that as per Dental Council of India (Establishment of New Dental

College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (hereinafter referred to as '2006 Regulations'), the application for starting a new course has to be submitted to the Secretary (Health), Ministry of Health and Family Welfare, Government of India with all necessary particulars. Reference is made by the Learned Government Pleader to Regulation 6(e) which reads as under:

> *"6(e) An essentiality certificate in Form 4 as annexed, regarding non objection of the State Government or Union Territory administration for the establishment of proposed Dental College at the proposed site and availability of adequate clinical material as per the Council's Regulations have been obtained by the applicant from the concerned State Government or Union Territory Administration;"*

The Learned Government Pleader also referred to Form No.4 which is the format of essentiality certificate. The format contains various particulars to be included and it is for the applicant to produce evidence that the infrastructure facilities such as teaching, pre-clinical, para-clinical and

allied medical sciences are owned by the proposed Dental College itself. Further State Government has to certify that the applicant owns and manages Dental Clinic with sufficient chairs, it is desirable to establish a Dental College in public interest, minimum 30 out door Dental patients per day are available to begin with and the credibility and the financial status of the applicant have been verified. Further the State Government has to certify that in case the applicant fails to create infrastructure for the College as per the norms and fresh admissions are stopped by the DCI, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government. On this basis, it is argued that the Government will have to conduct a detailed enquiry in regard to the various parameters provided in the format and when it is ultimately found that if the facilities are not enough to provide the 8 specialties, there is nothing wrong in the Government refusing to grant essentiality certificate.

Reference is also made to Ext.R2(d) to indicate that the facilities in the college were not sufficient for starting the MDS course.

16. The learned counsel appearing on behalf of DCI also supported the stand taken by the State Government. According to them, the application was incomplete and in the absence of an essentiality certificate and the consent for affiliation by the University DCI was justified in returning the documents. According to them, the last date of receipt of application by the Central Government in regard to MDS course is 30th June of any year and thereafter the Central Government has to forward the document to DCI for their scrutiny by 31st July. Recommendation of DCI to Central Government has to be completed by 28th February and letter of permission by Central Government on or before 31st March. In so far as the application is incomplete, the cut off date fixed for forwarding the application by Central Government to DCI had expired and therefore the learned

Single Judge was justified in declining to reconsider the application on merits.

17. The learned Standing counsel for University submits that 'consent for affiliation' can be issued only on the Government issuing essentiality certificate.

18. On the other hand, learned counsel appearing for the writ petitioners submitted that even as per Regulation 6 (e), the State Government's power is only to verify whether the site of the college is feasible and adequate clinical material is available as per the DCI Regulations. Other than verifying the availability of clinical materials, nothing else is to be verified by the State Government Learned counsel demonstrated that the clinical materials required for undergraduate and post graduate are the same and if essentiality certificate has been granted for increasing the number of seats from 50 to 100 nothing prevents the State Government from issuing essentiality certificate for the specialty courses as the same clinical materials are enough.

The learned counsel also relied upon judgment of the Supreme Court in **Royal Medical Trust (Regd) v. Union of India and Another** *[2013(12)SCALE 145]* to contend that in appropriate cases, the time for submitting the application can be extended as it is not on account of any mistake or deficiency on the part of the writ petitioner that the applications were returned, whereas it is only on account of the deficiency on the part of the State Government that the essentiality certificate is not issued in time. That was a case in which the University did not issue the affiliation certificate before 31/08/2012. Therefore the application was submitted without the affiliation certificate. The same was referred to the Medical Council of India for their remarks. Subsequently the University issued the affiliation certificate on 01/11/2012 which was after the deadline for application for the academic year 2013-14. The Council rejected the application on the ground that it was incomplete. The applicant filed a writ petition which was rejected and

thereafter filed special leave petition which was again rejected reserving liberty to the appellant to approach the appellate forum. The writ appeal was thereafter filed before the Division Bench which again came to be dismissed. It is challenging the said judgment that the matter was taken up before the Supreme Court. The Supreme Court held that the applicant had submitted application before the University well in time and it was without any reason that the consent for affiliation was delayed. After referring to various judgments on the point including **Mridul Dhar v. Union of India** *[(2005) 2 SCC 65]* and **Priya Gupta v. State of Chhattisgarh** *[(2012) 7 SCC 433]* wherein the Supreme Court held that strict adherence to the prescribed deadlines are to be followed, Supreme Court made a deviation from the said stand by indicating that since the appellant was not at fault the Council was expected to have appropriately considered the facts and circumstances of the matter and reached a conclusion one way or the other on its merits

instead of functioning in such mechanical manner by rejecting the application. Hence the appeal was allowed and a direction was issued to the Council to register the application for the academic year 2013-14 and proceed with the matter on its merits in accordance with the procedure prescribed. Learned counsel also referred to the judgment of the Supreme Court in **State of Maharashtra v. Indian Medical Association and others** [(2002) 1 SCC 589] wherein the Apex Court had occasion to construe the regulations framed under the Indian Medical Council Act, 1956 especially paragraph 3 of the Regulations which required an essentiality certificate from the State Government, and almost similar to Regulation 6(e) referred above. It is observed that other than the desirability of location of the proposed medical college, and certifying that adequate clinical material is available in the proposed medical college by the State Government, all other aspects regarding establishment of a new medical college and

imparting of education are governed by the Central Act and Regulations framed thereunder. It is held as under:

> *"In other words, in the matter of establishing a medical college and medical education, the field that is open where a State Government has any role to play is only in regard to decide the desirability of the location of the proposed medical college and grant of certificate that adequate clinical material is available as per medical council at the proposed medical college."*

Another judgment relied upon is **Thirumuruka Kirupananda Variyar Thava Thiru Sundara Swamikal Medical Educational and Charitable Trust v. State of Tamil Nadu and others** *[1996(3) SCC 15].* In that case the Supreme Court was concerned with a conflict between the State Act and the Central Act. It is held at paragraphs 33 and 34 as under:

> *"33. After the enactment of Section 10-A by the Central Government, the Medical Council, by notification dated 20-9-1993, has made the "Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulations, 1993"*

(hereinafter referred to as "the Regulations") whereby a scheme for application for permission of the Central Government to establish a new medical college has been made. In the said scheme qualifying criteria for applying for permission to establish a new medical college have been laid down. One of the conditions that is required to be fulfilled by the eligible organisations is that "essentiality certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration". Shri Sanghi has urged that even if the proviso to Section 5(5) of the Medical University Act is held to be inapplicable in the matter of establishing a new medical college and the requirement of obtaining the prior permission of the State Government for establishment of a medical college cannot be insisted upon under the said proviso, a similar requirement has now been imposed by virtue of the qualifying criteria laid down in the scheme as framed by the Regulations and that this was also insisted upon by the Central Government in its Letter of Intent dated 12-12-1995.

The submission of Shri Sanghi is that the State of Tamil Nadu has considered the matter in the light of this requirement and has refused the necessary permission.

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. The said condition about obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act. 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.".

Learned counsel also demonstrated on the basis of available documents that sufficient clinical materials were available and therefore there was no justification on the part of State Government in delaying the issuance of 'Essentiality certificate'. According to the learned counsel, the delay was deliberate as the petitioner's college did not enter into an agreement for seat sharing as suggested by the State Government.

19. Having regard to the aforesaid factual issues, the first question to be answered is whether State Government was justified in not issuing the essentiality certificate. A perusal of the 2006 Regulations would indicate that Regulation 6 applies in respect of permission to establish a Dental College. Third petitioner is an existing college with an intake capacity of 100 seats for BDS. The permission of the Central Government for starting new or

higher courses of study for training is regulated by Regulation 12 which reads as under:

> *"12. Application for permission of the Central Government for starting a new or higher course (including post graduate diploma courses) or training in a Dental College -*
>
> *For starting a new or higher course or training in Dental subjects including post graduate diploma course or training in a Dental College, a Dental College, subject to Regulation 13 shall apply to the Central Government by submitting a scheme in this regard in Form 2, as annexed, for obtaining its permission in conformity with the relevant regulations of the Dental Council of India."*

Qualifying criteria is prescribed under Regulation 13 and submission of the application in Form No.2 and application fee are regulated by Regulation 14 which reads as under:

> *"**13. Qualifying Criteria.-***
>
> *A dental college shall qualify for starting a new or higher course of study or training in dental subject, the following conditions are fulfilled.-*
>
> *(a) the dental qualification granted to the students of the dental college is recognised for running BDS course and conforms to the norms laid down by it;*

(b) the certificate regarding desirability and feasibility for starting a new or higher course of study or training at the dental college has been obtained by the college from the State Government or the Union Territory administration, as the case may be;

(c) letter of University's Permission, valid for the entire duration of the course, for starting such course or training at the dental college has been obtained by it from the University to which it is affiliated;

(d) the dental college has the full complement of staff, equipments and other infrastructure facilities prescribed for under-graduate training programme and also fulfils additional requirements in respect of funds or allocation of finances, staff and other infrastructure facilities as per the norms prescribed by the Council and approved by the Central Government under Section 20 of the Act in the M.D.S.Regulations, 1983 and P.G.Diploma Regulations, 1983, as amended from time to time.

(e) selection of candidates for post-graduate degree and post-graduate diploma courses will be made strictly on the basis of academic merit."

14. Submission of the application in Form 2 and the application fee.-

(1) The application containing the scheme for

starting a new or higher course of study or training in a dental college shall be submitted by the dental college in the Form 2, as referred to in regulation 12, to the Secretary (Health), Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, Maulana Azad Road, New Delhi - 110011, along with a non-refundable application fee of Rs.2.00 lakh for each specialty in the form of a Demand Draft/Pay Order in favour of Dental Council of India, payable at Delhi. The fee shall include registration fee, fee for technical scrutiny and fee for two inspections and other contingent expenditure.

(2) Incomplete applications will be returned by the Central Government to the dental college, along with enclosures and application fee.

(3) The application submitted under this regulation, if found complete in all respects, will be forwarded by the Central Government to the Council within 30 days of the receipt of such application for evaluation and recommendations. Acceptance of applications will, under no circumstances, be treated as approval of the application for grant of permission.

Clause 13(b) is relevant which requires a certificate regarding desirability and feasibility for starting a new or higher course of study or training at the Dental College to be

obtained by the College from the State Government. As per Regulation 13(c), the College requires a letter of University's permission for starting such course of training. Regulation 13(d) provides that if the College having full complement of staff, equipments and other infrastructure facilities prescribed for the undergraduate training programmes has to fulfill the additional requirements in respect of funds, finances, staff and other facilities as per the norms of the Council. Regulation 15 indicates that evaluation for a higher course is to be done by the Council to ascertain the desirability and prima facie feasibility for starting a new or higher course. It is open for them to seek further information or clarification or additional documents. It is based on such evaluation a report is submitted to the Central Government which is required to be considered and permission is granted in terms of Regulation 17.

20. Going by the aforesaid regulations which has statutory force what is required to be given by the State

Government is a certificate regarding desirability and feasibility for starting the higher course of study. In fact, there is no specific format provided in the Regulations. An essentiality certificate in Form No.4 is required to set up a Dental College. In the present case, what is required is only a certificate regarding desirability and feasibility for the specialty courses. What is the scope of enquiry for giving such a desirability and feasibility certificate is not evident from the Regulations. Apparently, it is only a formality especially on account of the fact that it is an existing Dental College. Further, Regulation 15 indicates that the Council, on the basis of the scheme submitted in terms of Regulation 14 has to ascertain the desirability and prima facie feasibility for starting a new or higher course of study and its capability to provide necessary resources and infrastructure. Form 2 is the application to be submitted for starting a new course or higher course of study. Column 8 shows letter of essentiality/permission of the State Government. Probably

the words are interchangeably used in the format. But, it is apparent that there is substantial difference between Regulation 6(e) and Regulation 13(b). While Regulation 6 (e) clearly indicates regarding the State Government's opinion with reference to the proposed site for establishing the Dental College and also availability of adequate clinical material as per the Council's regulations, the said two factors are conspicuously absent in the qualifying criteria specified under Regulation 13(b). The learned counsel for the writ petitioner had relied upon Section 10A(7) of the Dentists Act which reads as under:

> *"10A(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 authority or institution for grant of recognised dental qualification or the existing authority or institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of dental*

education in conformity with the requirements referred to in section 16-A and the regulations made under sub-section (1) of section 20;

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

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of 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 authority or institution 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 authority or institution or course of study or training by persons having the recognised dental qualifications;

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

(g) any other factors as may be prescribed.

The requirement of necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the institution is also a matter which has to be ensured by DCI. Further sub Section 7(d) indicates the requirement of hospital facilities which has to be provided within a time limit."

21. On a perusal of the aforesaid statutory provisions, it is rather clear that for an existing college to start a new course, the requirement from the State Government is only a certificate to indicate that it is desirable or feasible. In fact, the requirement of sufficiency of clinical material need not be verified for that purpose. What is desirability and feasibility for starting a new or higher course of study is not borne out by the Regulations. However, even if the State Government certifies that it is desirable and feasible it is for the Council to prima facie satisfy that it is desirable and feasible. In that view of the

matter, it is rather clear that grant of a certificate of desirability or feasibility as envisaged in Regulation 13(b) is only a formality and in the absence of any particular circumstance which prevents the State Government in granting such certificate, there is no reason to refuse the same.

22. It is pointed out by the learned Government Pleader appearing on behalf of the State Government that the College does not have the sufficient facility for starting MDS course in 8 specialties. He specifically refers to Ext.P20 and the deficiencies pointed out by the Government, based on the report by Director of Medical Education. From a perusal of Regulation 13(b), we are not satisfied that it is within the jurisdiction of the Government to consider whether the college has the required infrastructure for starting the MDS Course in 8 specialities. What is required to be considered is only in regard to the desirability and feasibility for a post graduate course.

23. The following meaning is given for the words 'Desirable' and 'Feasible' in the Advanced Law Lexicon by Sri.Ramanath Iyer:

> *'Desirable': Worth seeking or doing as advantageous, beneficial or wise [S.91(1), CrPC, 1973 (2 of 1974)]*
>
> *'Feasible': Capable of being done, performed, or effected; that may be accomplished or carried out; practically possible. (Century Dict; Webs.Dic.).*

Therefore, as far as existing college is concerned, not much exercise is required to be done by the State Government to ascertain whether the post graduate courses are desirable or feasible. As rightly contended by the learned counsel for the writ petitioners it is a matter absolutely within the discretion of the Council to verify whether the Scheme given by the College can be taken into consideration and the College be permitted to start new courses. Even otherwise, as rightly held by the learned Single Judge, in order to provide essentiality certificate itself, in terms of Regulation

6(e), the requirement of adequate clinical materials has been satisfied by the College. That apart, it is demonstrated by the learned counsel for the writ petitioners that the clinical materials required for the undergraduate and post graduate courses are the same. Apparently that is the reason why Regulation 13(b) does not contain any provision for verification of clinical material or the proposed site for starting a new or higher course of study. However, we make it clear that the certificate to be issued by the State Government is in terms of Regulation 13(b), whether the nomenclature used is essentiality certificate or desirability and feasibility certificate.

24. It is not in dispute that as far as the University is concerned, the College is already affiliated and the consent for affiliation will be granted subject to the certificate issued by the State Government. In the result, we do not intend to interfere with the findings of the learned Single Judge as impugned by the State.

25. Now, coming to the Writ Appeal filed by the writ petitioner, we are of the view that this is a case in which the judgment of the Supreme Court in **Royal Medical Trust** (supra) can be applied to the facts and circumstances of the case. It is not in dispute that the application for permission was filed before the Central Government within time, but without the essentiality certificate and the consent for affiliation from University. The Central Government had forwarded the matter to DCI who had returned the application on the ground that it is incomplete. DCI has time upto 28th February to consider the Scheme and to give a report to the Central Government. That stage has not reached so far. Under such circumstances, we are of the view that since the time for verification by DCI has not expired so far, an opportunity should be granted to the petitioners to resubmit their application along with the required certificates from the State Government as well as the University.

In the result, these appeals are disposed of as under:

i) W.A.No.1574/2014 is dismissed.

ii) W.A.No.1711 of 2014 is allowed. The State Government and the University shall comply with the directions issued by the learned Single Judge within a further period of seven days. Writ petitioners shall resubmit the applications to the Central Government within a further period of seven days thereafter. The Central Government on receipt of the same shall forward the applications to DCI as expeditiously as possible and not later than two weeks from the date of receipt, which shall be considered by the DCI in accordance with the procedure prescribed and appropriate orders shall be passed before 28/02/2015.

(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

jsr