

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 7010 of 2013 (A)

PETITIONER(S):

1. DR. VIJO GEORGE,
S/O.A.K.GEORGE, ATTUVATHALAKKAL HOUSE, KUNNUPRUAM
KOTTIYAM P.O, KOLLAM, PIN 691 571.
2. DR. MADHU K.G
S/O.K.R.GOPALAKRISHNAN, KANDATHIL HOUSE, PUNNAPRA
ALAPPUZHA, PIN 688 004.

BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA

RESPONDENT(S):

1. UNION OF INDIA
REPRESENTED BY DEPARTMENT OF HEALTH AND FAMILY WELFARE
NIRMAN BHAVAN, NEW DELHI-110001.
2. THE MEDICAL COUNCIL OF INDIA
REPRESENTED BY ITS SECRETARY, POCKET NO.14, SECTOR S
DWARAKA, PHASE 1, NEW DELHI PIN 110 077.
3. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
HEALTH AND FAMILY WELFARE (S) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
4. THE PRINCIPAL
GOVERNMENT T.D MEDICAL COLLEGE, ALAPPUZHA 688 005.
5. THE KERALA UNIVERSITY OF HEALTH SCIENCES,
MEDICAL COLLEGE P.O, THRISSUR, PIN-680596
REPRESENTED BY ITS REGISTRAR.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.TITUS MANI VETTOM, SC,
R3&4 BY GOVERNMENT PLEADER SRI.ROSHAN P.ALEXANDER
R5 BY ADV. SRI.P.SREEKUMAR,SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/01/2015
ALONG WITH WPC. 7049/2013, THE COURT ON 06-02-2015, DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE LETTER OF CONSENT 24.11.2010 OF THE REGISTRAR OF THE 5TH RESPONDENT.
- EXHIBIT P2. TRUE COPY OF THE COVERING LETTER DATED 25.11.2010 BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P3. TRUE COPY OF THE LETTER DATED 5.1.2011 BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE LETTER DATED 14.1.2011 OF THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE ORDER DATED 9.2.2011 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6. TRUE COPY OF THE LETTER DATED 11.8.2011 OF THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P7. TRUE COPY OF THE ORDER DATED 27.9.2011 OF THE 1ST RESPONDENT.
- EXHIBIT P8. TRUE COPY OF THE PRINTOUT OF THE RELEVANT PAGE OF THE WEBSITE OF THE 5TH RESPONDENT.
- EXHIBIT P9. TRUE COPY OF THE PRINTOUT FROM THE WEBSITE OF THE 5TH RESPONDENT.
- EXHIBIT P10. TRUE COPY OF THE ORDER OF THE MCI DATED 22.6.2012 OF THE 2ND RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P11. TRUE COPY OF THE LETTER DATED 3.7.2012 OF THE 3RD RESPONDENT ADDRESSED TO THE CENTRAL GOVERNMENT AND THE MCI.
- EXHIBIT P12. TRUE COPY OF THE LETTER SIGNED ON 6.8.2012 OF THE 2ND RESPONDENT TO THE PRINCIPAL SECRETARY OF THE 3RD RESPONDENT.
- EXHIBIT P13. TRUE COPY OF THE LETTER DATED 27.9.2012 OF THE 4TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P14. TRUE COPY OF THE COMMUNICATION DATED 27.10.2012 OF THE 2ND RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P15. TRUE COPY OF THE LETTER DATED 29.10.2012 ISSUED BY THE 3RD RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT P16. TRUE COPY OF THE COMMUNICATION DATED 7.2.2013 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

WP(C).No. 7010 of 2013 (A)

EXHIBIT P17. TRUE COPY JOF THE COMMUNICATION DATED 17/10/11 BEARING
NO.MCI-23(1)2011/MED/40408

EXHIBIT P18. TRUE COPY OF THE LETTER DATED 18/11/11 BEARING TO
83/6487/2007/TDMCA

EXHIBIT P19. TRUE COPY OF THE LETTER DATED 11/1/12 ISSUED BY THE R5 TO
THE R2

EXHIBIT P20. TRUE COPY OF THE LETTER DATED 16/7/14 ISSUED BY THE R4 TO
THE R2

EXHIBIT P21. TRUE COPY OF THE SCHEDULE OF PRACTICAL EXAMINATION AT TD
MEDICAL COLLEGE ALAPPUZHA

RESPONDENT(S)' EXHIBITS & ANNEXURES

EXHIBIT R2(A). TRUE COPY OF AMENDMENT NOTIFICATION PUBLISHED IN GAZETTE
OF INDIA DT.11/1/10 REGARDING TIME SCHEDULE

EXHIBIT R2(B). TRUE COPY OF LOI DT.14/6/12 ISSUED BY MCI

EXHIBIT R2(C). TRUE COPY OF LETTER OF ACCEPTANCE DT.15/6/12 SUBMITTED BY
GOVT.TD MEDICAL COLLEGE ALAPPUZHA.

EXHIBIT R2(D). TRUE COPY OF LOP DT.22/6/12 ISSUED BY MCI

ANNEXURE R5(A). TRUE COPY OF THE LETTER DATED 24/11/10

ANNEXURE R5(B). TRUE COPY OF THE LETTER DATED 5/9/12.

/ TRUE COPY /

P.S. TO JUDGE

PJ

'C.R'

A.V.RAMAKRISHNA PILLAI, J.

= = = = =

W.P(C) Nos.7010 & 7049 of 2013

= = = = =

Dated this the 6th day of February, 2015

JUDGMENT

These writ petitions convey the sad plight of four doctors, who on the strength of their inclusion in the merit list drawn on the basis of All Kerala Entrance Test for admission to Post Graduate Super Speciality Courses 2011, happened to be admitted to Doctor of Medicine (DM) course in Cardiology in the Government Medical College, Alleppey.

2. The petitioners are challenging the non-approval of the said course by the Medical Council of India, hereinafter referred to as MCI, even after the satisfactory completion of procedural formalities by the State as well the Kerala University of Health Sciences.

3. While the petitioners allege that the seats in the DM Cardiology in Medical College, Alleppey to which they were admitted is deemed to have been approved by the MCI under Section 10A(5) of the Indian Medical Council Act, 1956, hereinafter referred to as the Act, the MCI justified its stand harping on its powers under the Act and the Regulations made thereunder which occupy the legislative field in the matter.

4. The petitioners were admitted to DM Course in Cardiology in the Government Medical College during the academic year 2011-2012 in the order of merit based on a ranked list prepared in the All Kerala Entrance Test for admission to Post Graduate Super Speciality Courses 2011.

5. The State Government had intended to start a Post Graduate Course in Cardiology in Medical College, Alleppey in the back drop of acute shortage of qualified hands to handle the Cardiology Department in the said college. Thus, the Government decided to start D.M. Course in the year 2011. The Principal of the College submitted a scheme for approval of the course before the MCI with an intake of five students as early as on 25.11.2010. This was on the premise that the college was having sufficient facilities for conducting the said course.

6. The petitioners point out that on account of the delay on the part of the MCI to conduct inspection, the process got delayed, despite repeated reminders and, therefore, the State Government was pleased to issue order dated 27.9.2011 granting provisional permission to start DM course in Cardiology in the said college. The respondent university has also registered the name of the petitioners.

7. The petitioners allege that all along, they were under the impression that their admission and the course were regular and had necessary sanction of all authorities concerned, because according to them, the college was run by the Government and admissions were effected through machineries of the Government by a proper method of selection.

8. However, the first respondent issued order dated 22.6.2012 granting approval to start the said course with an intake of two candidates only, that too, for 2012-2013 prospectively. On receipt of the same, the State Government by letter dated 3.7.2012 addressed the Central Government and the MCI that admissions were also effected in 2011 and unless permission was granted to that batch, the students, including the petitioners who were admitted in 2011, would be put to trouble. In response to the same, the MCI issued a letter to the Government dated 6.8.2012 directing them to approach the respondent university and to request the university to move for recognition under Section 11(2) of the Act. The Government was also directed to forward ₹75,000/- as fee for inspection of recognition. The petitioners allege that the said amount was remitted and the Government addressed the respondent university to move the MCI under Section 11(2) of the

Act. However, the MCI issued letter dated 7.2.2013 directing the Principal to discharge the petitioners from the college. The same is under challenge in these writ petitions.

9. Detailed counter affidavits have been filed in these writ petitions.

10. In the counter affidavit filed by the MCI, they admitted that the application to start DM Cardiology course with four seats and some other courses for 2011-2012 was submitted by the Government Medical College, Allepey and the same was received in the office of the MCI on 30.11.2010. As no inspection fee was received along with the application, the college authorities were requested as per MCI's letter dated 5.1.2011 to send the same within ten days and it was received on 24.1.2010. However, according to the respondent, assessments by the MCI for the above said course could not be materialised within the statutory time schedule prescribed by the MCI Regulations for 2011-2012 and, therefore, such requests could be taken up for consideration only for 2012-2013. Thereafter, the assessments in regard to the application to start DM Cardiology course in the Government Medical College was duly conducted on 28.3.2012 by the assessors of the MCI in 2012-2013. Based on the assessor's report of March, 2012, the

Board of Governors constituted under the Act came to the conclusion that Letter of Intent (LOI) for starting DM Cardiology with two seats in Government Medical College, Alappuzha and, that too, with prospective effect from 2012-2013 could be granted.

11. Accordingly, the MCI authorities issued LOI dated 14.6.2012 to the Government Medical College, Alappuzha for starting DM Cardiology course with two seats. A true copy of the said LOI is produced as Ext.R1(b) in W.P(C) No.7049 of 2013. It was further contended that as per clause (3) of Ext.R1(b), it was stipulated that no student should be admitted for the above course till formal permission of the Board of Governors is granted. As per clause 8 of Ext.R1(b), no admission is permitted beyond the sanctioned intake capacity and selection of students to the Medical College should be in accordance with the MCI's PG Medical Education Regulations, and that no admission is permitted beyond the cut off date. The college authorities were directed as per Ext.R1 (b) to sent the acceptance letter accepting the above said terms and conditions stipulated in Ext.R1(b) so that, on receipt of such acceptance letter, the Board of Governors could consider the issue of letter of permission (LOP) for 2012-2013. The college authorities sent their acceptance letter dated 15.6.2012 regarding acceptance

of the conditions in the LOI. A true copy of the said acceptance letter is produced as Ext.R1(c) in W.P(C) No.7049 of 2013.

12. Pursuant to Ext.R1(c), the Board of Governors decided to grant permission under Section 10A for starting DM Cardiology course with two seats with prospective effect from 2012-2013 in the Government Medical College. Accordingly, LOP dated 22.6.2012 was issued by the MCI authorities, a true copy of which is produced as Ext.R1(d).

13. It was further contended that without the permission under Section 10A of the IMC Act, the Government started DM Cardiology course for 2011-2012 and admitted four students to that course in the said college. The Principal was requested to take up the matter with the MCI for ex-post facto sanction for starting the said course from 2011-2012. Though the said request was received, the decision as per Ext.R1(d) LOP dated 22.6.2012 was to grant permission to start the said course with two seats and with prospective effect from 2012-2013 only.

14. It was further contended that it is by strict compliance of various statutory provisions, that the admission capacity regulating intake of students for admissions in various courses, including post graduate courses in broad specialties and super specialties, have

been fixed by evaluating the infrastructural, teaching and various other facilities and requirements of the statutory regulations. There is no question of increasing the seats over and above the sanctioned annual intake capacity of seats for such admissions to the super speciality courses concerned and there is no question of starting new courses, including post graduate course, without the prior permission under Section 10A.

15. It was further contended that the MCI can take decision to permit new courses or increase intake of seats etc., only on fulfillment of all the requirements of Section 10A and the regulations framed thereunder. Moreover the parameters mandated as per clauses (a) to (g) of Section 10A(7) are to be complied with. The power to give permission is only after satisfaction of the aforementioned statutory aspects. The only provision which enables any retrospective permission is only the limited class of cases covered by Section 10C. It was further contended that there was no previous permission by the MCI. Therefore, according to them, the action of the State Government in issuing the Government Order dated 27.9.2011 directing to admit four students in the said course in that college in 2011-2012 is *ultra vires* and against the provisions of the Act.

16. As regards the issue of grant of recognition the procedure in that regard has already been stated in Ext.R1(d) in W.P(C) No.7049 of 2013. It was further contended that only those medical courses which have been started with due permission under Section 10A can be recognised as per Section 11(2), in view of the mandatory provisions in Section 10B of the IMC Act. Therefore, there is no impropriety or irregularity in the issuance of impugned proceedings; it was contended. It was also contended that the contentions raised by the petitioners on the basis of the deeming provisions under Section 10A(5) are untenable and devoid of any merit, as neither the applicant medical college nor the State Government has ever attempted to make such claim.

17. It was further contended that the petitioners who were unlawfully admitted to the course in 2011-2012 without the permission under Section 10A cannot get any benefit from the seats permitted for the course for 2012-2013 as per Exts.R1(b) and R1(d) which were issued prospectively with effect from 2012-2013. The Universities/States/Colleges have no discretion to deviate from the Regulations and decisions of the MCI, which is the Apex Central Regulatory body and that any decision of the University/State/College to the extent it is in repugnancy or in derogation of the

provisions of the IMC Act. The admission without permission under Section 10A of Act is clearly hit by the statutory provisions. Therefore, they prayed for dismissal of the writ petitions.

18. In the counter affidavit filed by the State, they contended as follows:

It is stated that petitioners were admitted from the ranked list for Post Graduate Super Speciality, DM Cardiology Course, 2011 by the Director of Medical Education pursuant to the sanction accorded by Government by virtue of G.O(Rt) No. 3400/2011/H&FWD dated 27.9.2011. The said order was issued by the Government on the basis of the representation dated 16.7.2011 from the rank holders of Post Graduate Super Speciality (DM Cardiology) Course. The ranked list was due to expire on 30.9.2011. Though the Principal, Government Medical College, Alappuzha has requested the MCI for issuing letter of permission after conducting inspection as early as on 25.11.2010, the MCI has not conducted any inspection within the time scheduled for inspection and not issued any letter of permission for starting the course till Ext.P7. Therefore, Government thought it appropriate to give provisional permission for starting DM Cardiology course in Government Medical College, Alappuzha with an annual intake of four seats,

subject to the recognition of MCI. The Director of Medical Education and the Principal, Medical College, Alappuzha were urged to take immediate action to allot eligible candidates to the course from the ranked list after obtaining an undertaking to the effect that they would not hold Government of Kerala responsible for any consequence of the sanction of the course. It was further stated that the petitioners were admitted pursuant to Ext.P7.

It is further stated that the MCI responded for remittance of fees within 10 days by virtue of its communication dated 5.1.2011 which was received on 10.1.2011. The Principal acted promptly on 14.1.2011 to the letter received on 10.1.2011 by enclosing a demand draft of ₹22 lakhs. However, no response was forthcoming from the MCI. Despite the issuance of several reminders, including letter dated 11.8.2011, due to the reason that the ranked list for 2011 was expiring on 30.9.2011, the MCI did not respond. Later, by virtue of letter dated 17.10.2011, the MCI requested the Principal, TD Medical College, Alappuzha to re-validate the demand draft for ₹22 lakhs as application fees, since the validity of the earlier demand draft had expired. Despite the prompt response by re-validating the demand draft from the part of the Principal, MCI did not conduct inspection till 28.3.2012. On

28.3.2012, i.e., nearly after 6 months, after the commencement of classes the MIC conducted the inspection. It was further contended that to the utter shock and dismay of the petitioners as well as the Government, the MCI has issued letter dated 22.6.2012 informing that permission was accorded for starting DM Cardiology course with annual intake of two seats per year with prospective effect from the academic year 2012-2013.

Against this unfortunate action, Government of Kerala have taken up the issue with the Government of India and MCI for ex post facto sanction and permission regularising the admission of four students with effect from the academic year 2011-12 by virtue of letter dated 3.7.2012. Along with this request, Government also gave direction to the Director of Medical Education not to fill the DM Cardiology seats in the Government TD Medical College, Alappuzha permitted by the MCI during the academic year 2012. In compliance of the direction, the seats were not included in the prospectus for Post Graduate Super Speciality admission 2012.

The MCI has accepted the facts reported by Government of Kerala and informed the Government to approach the affiliating University to forward a formal request under Section 11(2) of the Indian Medical Council Act, 1956 for recognition of DM Cardiology

qualification to the Central Government for onward transmission to the MCI. It was further requested by the MCI by virtue of Ext.P12 to remit an amount of ₹75,000/- for inspection of recognition. In compliance of the request, the Government issued request dated 29.10.2013 under Section 11(2) of the Act. In reply to the same, the Registrar, Kerala University of Health Sciences has reported that the course was started in the year 2011 and granting of the medical qualification would arise only in the year 2014, when the students appear for final examination.

It was further stated that the University has already issued letter of consent to start the course. Therefore, the Registrar of the respondent University has reported that the University is unable to approach the Central Government for recognition of the DM Cardiology course run by the Government Medical College, Alappuzha.

Be that as it may, writ petitions were filed challenging the non-filling of DM Cardiology seats allotted to Government Medical College, Alappuzha and non-publication of such seats in prospectus. By virtue of interim order dated 26.9.2012 in W.P(C) No.18478 and 18676 of 2011, this Court has directed the Director of Medical Education to admit two candidates in the two seats in DM

Cardiology Course from the list published for medical Post Graduate Super Speciality Course, 2012, who are eligible in terms of ranking before 30.9.2012. The said judgment was confirmed by a Division Bench of this Court as well as by the Apex Court. Soon after the disposal of the above writ petitions, the second respondent issued communication dated 7.2.2013 to the Government of Kerala requesting the Government to discharge the four students who are admitted in the year 2011-2012.

It was further stated that the Government has accorded provisional sanction for starting DM Cardiology courses at Government Medical College, Alappuzha due to a special circumstance of indefinite delay in conducting inspection of the MCI and the requests of the rank holders of PG Super Speciality courses, 2012. The Government have requested the MCI and the Government of India for regularising the admission of four students admitted to the course considering their future. It is also stated that the MCI has admitted the request made by the Government and hence directed to approach the affiliating university to forward a formal request under Section 11(2) of the IMC Act, 1956 for recognition of DM Cardiology qualification to the Central Government, Ministry of Health and Family Welfare for onward

transmission to MCI and to remit an amount of ₹75,000/- for inspection of recognition. But the Medical Council had later resiled from the stand and directed the Government to discharge the students; it was contended.

It was stated that the four students admitted to DM Cardiology course had completed their course and appeared for the final examination. The results of the examination, except that of these four students, were published on 5.9.2014. If the result of these four students have not been published and the admission of them have not been regularised, the future of the students would be put in dark. It was also stated that the delay caused by the MCI in considering the application forwarded by the Director of Medical Education during November, 2010 along with the fees resulted in the present issue. It was further contended that though the application was filed on November, 2010 and the fees were paid in time as directed by the MCI, the inspection by the MCI did not materialise in time, for which they offered no explanation.

19. The respondent university has filed a statement wherein it was averred that by the time the MCI has granted recognition to DM Cardiology course in Government Medical College, Alappuzha for the assessment year 2012-2013, the petitioners have completed

their first year course in the DM Cardiology. It is averred that the petitioners were fully qualified to be admitted to a super speciality course in any of the recognised institutions on the basis of their rank in the select list. The petitioners appeared in the university examinations based on different interim orders of this Court and the results of the examinations of DM Cardiology course for 2011-2012 admissions have already been declared by the university. However, the result of the petitioners were withheld in terms of the directions issued by this Court.

20. They would further contend that the university have the power to institute and award degrees, diplomas and other academic distinctions. Therefore, it is well within the powers of the respondent university to conduct any medical course and to award degrees in respect of the same. The recognition granted by the 2nd respondent under Section 10A of the Act is distinct and different from the institution of courses and granting of degrees from the university. It is also averred that Section 10B of the Act also gives the impression that there could be degrees without the recognition of the MCI. They would further state that considering the fact that it is impossible to wipe out the knowledge and experience gained by the petitioners through undergoing the course, a lenient view be taken

in this matter. The respondent university also asserted that there was absolutely no default on the part of the petitioners in joining the course, especially in a Government institution on the allotment made by the government authorities.

21. The petitioners have filed reply affidavits refuting the contentions taken by the MCI in their counter affidavit.

22. I have heard Mr. Kurian George Kannanthanam, the learned Senior Counsel for the petitioner in W.P(C) No.7010 of 2013, Mr. Jacob P. Alex, the learned counsel for the petitioner in W.P(C) No.7049 of 2013, Mr. N. Nagaresh, the learned Assistant Solicitor General, Mr. Roshan D. Alexander, the learned Senior Government Pleader Mr. Titus Mani, the learned standing counsel for the Medical Council of India and Mr. P. Sreekumar, the learned counsel for the respondent university.

23. The documents can be referred as they are arrayed in W.P (C) No.7049 of 2013.

24. It is an admitted case that the State was intending to start DM Course in Cardiology in Government Medical College, Alappuzha. It is also an admitted case that the Principal of the college submitted a scheme for approval of the course before the MCI. As there was delay in granting permission by the MCI in spite of

the remittance of the required fees, the Government granted provisional permission to start the DM Cardiology course in the said college. However, the first respondent (MCI) issued order dated 26.2.2012 granting approval to start the said course with an intake of two candidates only, that too, for 2012-2013 prospectively.

25. Mr. Titus Mani, the learned standing counsel for MCI submitted that the decision of the Government to start DM course in Cardiology in the Medical College, Alappuzha was ill-motivated. According to the learned standing counsel, the intention of the Government was to accommodate the petitioners herein who could not get admission to other colleges because of their low rank in the select list. In support of the argument, Mr. Titus Mani invited my attention to Ext.P7 order dated 27.9.2011 by which the Government directed the Principal of Medical College, Alappuzha to take immediate action to take up the matter with the MCI for ex post facto sanction for starting DM Cardiology Course. My attention was invited to the reference cited second in Ext.P7. It is a representation dated 16.7.2011 from the rank holders of PG Super Speciality (DM Cardiology) Courses. It was argued by Mr. Titus Mani that it was at the instigation of the petitioners herein that the State made a move to start the Post Graduate course in the Medical College, Alappuzha.

However, this was denied by the Mr. Roshan D. Alexander, the learned Senior Government Pleader.

26. The learned Senior Government Pleader would submit that a writ petition was *suo motu* registered by a Division Bench of this Court as W.P(C) No.18112 of 2005 as it was brought to the notice of this Court that the facilities available in Alappuzha Medical College in general, and in the Cardiology Department in particular, were so pathetically inadequate. In response to the notice issued to the respondents, several statements/counter affidavits have been filed from time to time indicating the various steps take to tide over the deficiencies and poor state of affairs. Ultimately, the writ petition was disposed of as per Ext.P1 judgment dated 21.12.2009 expressing satisfaction regarding the efforts that were being made by the Government to improve the conditions of the Medical College, Alappuzha, particularly the Cardiology Department. Therefore, according to the learned Senior Government Pleader, the Government thought it fit to have a Post Graduate course in DM Cardiology in the said medical college. In the light of the background pointed out by the learned Senior Government Pleader, this Court is of the view that there is absolutely no reason to doubt the genuineness of the motive of the Government in the matter.

27. It is evident from Ext.P8 which is true copy of the list of affiliated colleges in the fourth respondent that there were altogether 23 seats affiliated to the fourth respondent university for DM Cardiology course. The petitioners allege that all the seats referred to in Ext.P8 were filled up in the order of merit drawn based on All Kerala Entrance Test for admission to Post Graduate Super Speciality Courses, 2011. This is not disputed by the MCI in their counter affidavit. A true copy of the provisional ranked list for All Kerala Entrance Test for admission to Post Graduate Super Speciality Courses, 2011 is produced and marked as Ext.P9. The first petitioner in W.P(C) No.7010 of 2013 was ranked 19 and the second petitioner in the said writ petition was ranked 20. The first petitioner in W.P(C) No.7049 of 2013 was ranked 17 and the second petitioner in the said writ petition was ranked 77 having applied in the quota reserved for doctors in State service. Therefore, I see no merit in the argument advanced by the learned standing counsel for the MCI that the petitioners were far below in rank in the select list and therefore, could not get admission for any of the post graduate courses in any of the medical colleges in Kerala.

28. Ext.P2 dated 25.11.2010 was submitted by the Government Medical College, Alappuzha to the MCI seeking

permission to start new courses. In response to that, the Principal received Ext.P3 letter dated 5.1.2011 from the MCI asking to remit ₹22 lakhs towards application fee. Ext.P4 dated 14.1.2011 reveals that the amounts sought in Ext.P3 was immediately remitted and the DD was forwarded to the MCI. Based on the recommendation of the Principal, the Government issued permission for starting super speciality courses as per Ext.P5 dated 9.2.2011 which would go to show that respondents 2, 3, and 4 were satisfied with the facilities available in the medical college for starting a college with the actual intake of five seats. However, it is relevant to note that during this time, the MCI did not take steps to carry out the inspection pursuant to Ext.P2. Therefore, the college again requested the MCI to take immediate action for starting super speciality courses as per Ext.P6 dated 11.8.2011.

29. It is relevant to note that in Ext.P6, it was specifically pointed out that the Department of Cardiology is fully equipped to start the course. Even after Ext.P6, the MCI did not take any steps to carry out the inspection or to issue necessary permission. Because of the inordinate delay on the part of the MCI in issuing permission and also on account of the deadline for 2011 admissions falling on 30.9.2011, the Government issued Ext.P7 order dated

27.9.2011 and decided to admit four students to the DM Cardiology course for the academic year 2011-2012.

30. Even after one year of submitting Ext.P2 scheme, the MCI did not communicate any orders approving or disapproving the same. However, in March 2012, the Assessor of the MCI carried out inspection based on Ext.P2 and submitted a report to the MCI. Ext.P11 is the Assessor's report dated 28.3.2012. It is found that the Cardiology Department of T. D. Medical College is fully equipped to give training to the students as proposed in Ext.P2. No defects were pointed out in Ext.P1. It is crucial to note that the factum of training of four students, including the petitioners were recorded in Ext.P11.

31. However, on 22.6.2012, as per letter bearing No. MCI-68 (22)/2011-Med/101309, permission under Section 10A was issued to admit two students with prospective effect. Ext.P12 is the copy of the letter. It is pertinent to note that Ext.P12 was issued with reference to an application filed in November, 2010 with a delay of about two years. With reference to Ext.P12, the State again addressed the medical council as per Ext.P13 dated 3.7.2012 requesting the MCI to grant necessary ex post facto recognition to the petitioners and other students. It was further intimated that the

Government was not allotting any students to the course in the academic year 2012-2013. In response to that, the MCI issued Ext.P14 letter dated 6.8.2012 asking the State to make a formal request to the Central Government through the affiliating university under Section 11(2) of the Act for recognition of the qualification of “students being trained”, i.e., the petitioners in the Government Medical College, Alappuzha. The MCI had further asked the State to send an amount of ₹75,000/- for the purpose of inspection. Immediately, the said amount was sent as evident from Ext.P15 and the State on 29.10.2012 asked the respondent university to forward the request under Section 11(2) of the Act for recognition of the course in respect of the petitioners.

32. In the meanwhile, some other events happened. Certain candidates who appeared for All Kerala Entrance Test for Admission to Post Graduate Super Speciality Courses, 2012 approached this Court for a direction to the respondent State and others to fill up the two seats granted as per Ext.P12 from the ranked list of 2012 entrance test. The same was disposed of as per Ext.P17 by a common judgment directing the Director of Medical Education to conduct counselling for the two seats referred to in Ext.P12 and to admit the eligible candidates. Admittedly, Ext.P17 judgment has

attained finality. Later, the MCI issued Ext.P18 letter dated 7.2.2013 asking the State to take steps to discharge the petitioners on the premise that the petitioners were admitted without the permission under Section 10A.

33. The argument advanced by Mr. Titus Mani is that the act of granting provisional permission by the State to start DM Cardiology course without the permission of the MCI is a blatant violation of Article 246 of the Constitution of India. The learned counsel invited my attention to the decision in **Dr. Preeti Srivastava And Another v. State of M.P. And Others** [(1999) & Supreme Court Cases 120] to argue that the State Government is incompetent to issue such orders in the light of Article 246 of the Constitution of India.

34. The issue arose in the aforesaid case was whether apart from providing reservation for admission to the postgraduate courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category. There cannot be any quarrel against the proposition that once the Central Government prescribes a

particular criteria for admission, the State Government cannot prescribe a different method for admission.

35. The present case stands entirely on a different footing. Here, the State has not prescribed any method of admission. The Medical College under the State has applied to the MCI for permission to start Post Graduate course in DM Cardiology with an intake of four seats. The prescribed fee was also remitted in time. There was follow up action from the part of the Government. However, there was inaction on the part of the MCI. Because of the delay on the part of the MIC and taking note of the closing date of 2011 admission, the Government decided to admit four students to DM Cardiology in Government Medical College, Allepey.

36. Mr. Kurian George Kannanthanam would submit that DM Cardiology course in the medical college to which the petitioners were admitted is deemed to have been approved by the MCI under Section 10A(5) of the IMC Act because of the inaction of the MCI on the application made by the college for more than one year. On a careful analysis of the scheme of the Act pertaining to recognition of medical qualification, the following points can be noted:

37. Section 2(h) of the Act defines the recognised medical qualification as any of the medical qualifications included in the

schedule. Section 10A(1) specifies that a recognised medical qualification shall be obtained only with previous permission of the Central Government. As per Section 10A(2) a Scheme has to be submitted to the Central Government which in turn has to be forwarded to the MCI. Upon receipt of the Scheme under Section 10A(2), the MCI may obtain particulars as provided under Section 10A(3). Section 10A(3)(a) makes it clear that if the scheme is defective, the MCI shall give an opportunity to the applicant to rectify the defect. As per Section 10A(4), the Central Government after considering the Scheme and recommendation of MCI—may either approve/disapprove the Scheme. Section 10A(8) makes it clear that approval or disapproval of the Scheme shall be by passing an order which has to be communicated to the party concerned. It is also relevant to note that while passing the order under Section 10A(8), the Central Government shall have due regard to the aspects mentioned in Section 10A(7). If the MCI has not issued any communication under Section 10A(3)(a) or has not passed any order under Section 10A(8) within one year after submission of Section 10A(2) Scheme, then the scheme shall be deemed to have been approved by the Central Government under Section 10A(5).

38. In the counter affidavit filed by the MCI, they have not given a justifiable reason for the inordinate delay in signifying their assent or dissent within the statutory period of one year. On the other hand, it is repeatedly stated in their counter that the MCI has granted sanction to start the course for the year 2012-2013, that too, prospectively. In the counter affidavit, the MCI has admitted that the assessment process in respect of Ext.P2 application could not be completed by them for 2011-2012 before expiry of the statutory time schedule and the same can be taken up for consideration only for 2012-2013. No reasons are forthcoming for the delay. It shows that the MCI did not comply with the time schedule and they did nothing within one year of submission of the application. Now, they are contending that the State Government was incompetent to start medical college in DM Cardiology course without their permission.

39. Inaction and lethargy writ large at every stage of processing the application. The demand draft for ₹22 lakhs submitted by the college along with Ext.P3 letter dated 5.1.2011 was returned vide Ext.P19 letter dated 17.10.2011 seeking revalidation of the demand draft for starting the course for the year 2011-2012. The revalidated demand draft was forwarded on

24.10.2011 as stated in Ext.P19. This was followed by Ext.P20 reminder on 18.12.2011 from the medical college and Ext.P21 reminder dated 11.1.2012 from the Government.

40. The sequence of events in the instance case would show that after issuance of Section 10A permission on 22.6.2012, the Government issued Ext.P13 on 3.7.2012 requesting the MCI to grant recognition to the students admitted in 2011. In response to the same, the MCI on 6.8.2012 issued Ext.P14 asking the State to approach the affiliating university to forward a formal request under Section 11(2) of the IMC Act, 1956 for recognition of DM (Cardiology) qualification. Thereafter the 1st respondent abruptly issued Ext.P18 without understanding the true intent of Section 11 (2) of the Act. The MCI is estopped from taking a contrary position in Ext.P18 after issuance of Ext.P14 and receiving the fees.

41. Acting on Ext.P14, the Government remitted necessary fee as evidenced by Ext.P15 and issued Ext.P16. The respondent university was duty bound to take necessary action on Ext.P16 by making necessary application before the Central Government and taking necessary steps to get recognition to the medical qualification going to be granted to the petitioners, in accordance with Section 11(2) of the Act.

42. Ext.P2 scheme seeking permission to start the course was submitted on 25.11.2010. An order on the same was passed only on 22.6.2012. As already pointed out, if no orders were passed on a scheme in the nature of Ext.P2 after expiry of one year, such scheme shall be deemed to have been approved in the form in which it has been submitted. In Ext.P18, it is admitted by the MCI that the assessment process in respect of the above application could not be completed by MCI for 2011-2012 before the expiry of the statutory time schedule and the same could be taken up for consideration only for 2012-2013. As such with effect from 25.11.2011, Section 10A permission is deemed to have been granted. This angle of deemed permission is not acknowledged in Ext.P18; as rightly submitted by the learned Senior Counsel for the petitioners.

43. The fact that the petitioners were being trained in permitted seats after 25.11.2011 was overlooked in Ext.P18. Even if it is assumed that the petitioners were admitted against the seats that were not permitted under Section 10A, but immediately after admission, those seats got deemed permission in accordance with Section 10A(5) of the Act. The fact that the petitioners were continuing their studies in the seats that acquired deemed

recognition was overlooked in Ext.P18. Therefore, Ext.P18 has no legal force to stand and, therefore, this has to go.

44. The MCI did not seek any additional information in accordance with Section 10A(3) and there was no disapproval of the scheme as per the first proviso to Section 10A(4). No order or communication of approval or disapproval as required under Section 10A(8) was sent by the MCI. On the other hand Ext.P2 application was under process as evident from the averment in the counter affidavit. It is relevant to note that MCI as per Ext.P3 asked the college to remit the fees for processing the same to the year 2011-2012. If it was not for the year 2011-2012, there was no necessity to remit the fees in ten days. In Ext.P19 also, they said that the application was for the year 2011-2012. In Ext.P14, it was specifically asked to submit the application under Section 11(2) and to remit the inspection fee. The inspection fee so remitted was acknowledged in Ext.P15.

45. The MCI by their conduct created a legitimate expectation in the mind of the petitioners that permission would be granted for the course to which they were admitted. Placing reliance on the conduct of the MCI, the college as well as the State went ahead. The doctrine of legitimate expectation is described in Halsbery's Laws of

England (4th Edition Vol-I pp.151-152) as under:

“A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation or from consistent past practice”. (emphasis added)

46. A legitimate expectation is distinguishable from a genuine expectation. The expectation should be justifiably legitimate and protectable. Fairness in administrative action is the foundation stone of the doctrine of legitimate expectation. The term 'fairness' includes non-arbitrariness and reasonableness in action. Though legitimate expectation of a citizen may not by itself be a distinct and enforceable right, the failure to consider the same and give due weight to it may render the decision arbitrary. This is how the requirement of due consideration of the legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. (See **Food Corporation of India v. M/s. Kamadhenu Cattle Feed Industries** [1993 (1) SCC 71 at p.76]). The request of the MCI to forward the prescribed fee, the

subsequent request for revalidation of the D.D, the direction to the Government to prevail upon the respondent university to take up the matter with the Central Government under Section 11(2) of the Act, the request for remittance of inspection fee etc., amount to implied representation by the MCI which paved way to the legitimate expectation of the petitioners that the course they were undergoing would be recognised by the MCI. However, the MCI conveniently forgot this aspect while issuing Ext.P18 which is nothing, but arbitrariness.

47. It is settled law that the principle of promissory estoppel applies also against the functionaries under the State, unless there is overriding public interest. Here, there was detrimental reliance on the implied representation of the MCI by the college as well as by the petitioners to bind the MCI by the implied representation. It is true that the breach of the implied representation which would violate the petitioners' rights has to be balanced against public interest. In other words, such implied representation would not prevail where third party interest would be compromised. In this case the MCI could not point out any overriding public interest to resile from their previous stand. The MCI has no case that the college is not having sufficient infrastructure to conduct the course.

The decision of the State Government to start the course was motivated by public interest. The petitioner was selected on the basis of a selection procedure which was not subjected to any challenge. At any rate, after 25.11.2011 seats to which the petitioners were admitted is deemed to have been recognised.

48. Now, the remaining question that has to be answered is whether there is any bar in granting the post graduate degree to the petitioners by the respondent university.

49. It was argued by Mr. Kurian George Kannamthanam and Mr. Jacob P. Alex that the respondent university has already registered/affiliated the petitioners in its rolls as per Ext.P10 and was imparting necessary training, since September, 2011, for awarding a medical qualification through the Principal of the Government Medical College, Alappuzha. It is submitted that the petitioners have completed training and they have taken the examination, and the results are now withheld by the respondent university on account of the pendency of this writ petitions. It is further submitted that the right of the petitioners to obtain medical qualification cannot be restricted by the MCI. The learned Senior Government Pleader as well the learned standing counsel for the university supported these arguments.

50. Mr. Titus Mani was placing much reliance on Section 10A of the Act which mandates previous permission from MCI for starting medical colleges. However, it has to be noted that Section 10A of the Act only restricts a medical college from starting a new or higher course of study or training or increase its admission capacity in any course of study or training without previous permission. Section 10B of the Act details the consequence to a medical college in the event of violation of Section 10A. There is no such restriction to any medical institution or university to grant a medical qualification. Of course, such medical qualification would be treated as recognised medical qualification “for the purpose of the Act” only in accordance with Section 11(2) of the Act by getting the first schedule of the Act amended. It is in this background that the MCI considered Ext.P13 request of the State and later issued Ext.P14 asking the State to approach the affiliating university to forward formal request under Section 11(2) of the Act for recognition of DM Cardiology qualification. Acting upon Ext.P14, the State already issued Ext.P16 and the MCI is duty bound to consider the application to be submitted under Section 11(2) of the Act.

51. Section 10A of the Act provides the procedure for obtaining permission for establishment of new medical colleges/new

course of study. Sections 11 to 14 deals with procedure for recognition of medical qualifications granted by different universities or medical institutions within or outside India. Section 11 provides for recognition of medical qualifications granted by the medical institutions in countries with which there is a scheme of reciprocity. Section 13 deals with recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the first or second schedule. Section 14 provides a special provision for recognition of medical qualifications granted by certain medical institutions in countries with which there is no scheme of reciprocity. The essential difference between permission under Section 10A of the Act and recognition under Section 11 was already considered by the Apex Court in **Mridul Dhar v. Union of India** [(2005) 2 SCC 65]. Recently, this aspect was taken note of in **MCI v. Rama Medical College** [(2012) 8 SCC 80].

52. The MCI is primarily intended to prescribe, control and supervise the minimum standards of medical education and to regulate its observance. Even in Ext.P18, there is no allegation that petitioners are ineligible for securing admission to the course or the facilities in the Cardiology Department of the respondent college are

inadequate with respect of the Act or PG Medical Regulations. The claim in Exts.P2 and P6 that the Cardiology Department did satisfy all the prescribed infrastructural, teaching and other facilities for starting the course as prescribed under the Regulations is found true and approved by the Assessor of the MCI as evident from Ext.P11 report. The fact that the petitioners were admitted to the course were also mentioned in Ext.P11.

53. As the DM Cardiology seats in the medical college, to which the petitioners were admitted, is deemed to have been approved by the MCI under Section 10A(5) of the Act, the petitioners are entitled to complete the course/training and to obtain a medical qualification in accordance with law and thereafter are entitled to get the necessary application considered by the MCI, as envisaged in Exts.P14 and P16. Therefore, the authority of the MCI is limited to consider the application for recognition of the petitioners in accordance with the Act.

54. The MCI is incompetent to issue Ext.P18 and interdict the State or the respondent university from conferring medical qualification to the petitioners as the Act only deals with the recognition of medical qualification for the purpose of the Act. The expression “for the purpose of this Act” is used in Sections 10B(1),

10B(2), 10B(3), 11(1), 12(1), 13(1) and 14(1). As such, the MCI can, at the most, refuse to recognise a medical qualification. At any rate, the MCI cannot prevent the State/ University from conferring degree or medical qualification to a person.

55. It is relevant to note that under Section 6 of the Kerala University of Health Science Act, it is the respondent university to confer a degree. The medical qualification and the recognised medical qualification are different. Similarly, conferring a medical qualification to a person who successfully completed a course and recognition of that qualification are different aspects. At any rate, the MCI cannot prevent respondents 2 to 4 from conferring the medical qualification.

56. Before starting the course, the facilities in the college was inspected by the respondent university and it was found that facilities were available. As evident from Ext.P8 and P10, the petitioners were affiliated by the respondent university and were treated as regular students. Therefore, nothing prevents the respondent university from affiliating the petitioners with effect from the original date of joining and granting a degree to them, if they have passed the examination in which they have appeared.

57. It is common knowledge that DM Cardiology is the most sought after post graduate course in medicine. The petitioners on account of their higher position in the select list got admission to DM Cardiology in Government Medical College, Alappuzha. Had they not been admitted to the said course, they could have obtained admission to some other discipline in any other medical college because of their position in the select list. Now the petitioners are facing a strange situation as they have become the victims of their excellence. That is the reason why I have said in the opening paragraph itself that these writ petitions convey the sad plight of the petitioners.

58. On a consideration of the entire materials placed on record, this Court is of the definite view that the petitioners are entitled to succeed.

In the result, the writ petitions are allowed. Ext.P18 in W.P(C) No.7049 of 2013 (Ext.P16 in W.P(C) No.7010 of 2013) is quashed.

It is hereby declared that the DM course in Cardiology at Government Medical College, Alappuzha to which the petitioners were admitted during the academic year 2011-2012 is deemed to have been permitted under Section 10A(5) of the Act.

As the petitioners have completed the DM Cardiology course and they have taken up the examination, the respondent university is directed to declare the result, and to grant degree in DM Cardiology course if they are qualified in the examination.

If it is found that the petitioners are qualified for the award of DM Cardiology degree, the respondent university shall forward necessary application under Section 11(2) of the Act to the Government of India, for getting recognition to the DM Cardiology medical qualification for which, the petitioners have acquired on the basis of the result so declared.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj

/True Copy/

P.A to Judge