

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 27033 of 2012 (S)

PETITIONER(S) :-

DR.P.G.HARI, AGED 41 YEARS, S/O.GOPINATHA KURUP
POTTAYANGAL BUILDING
P.O. KAMBALAKKAD, WAYANAD DISTRICT
CONVENER KARAPUZHA SAMRAKSHANA JANAKEEYA SAMITHI
ABRAHAM HOMEO MEDICAL CENTER, KALPETTA
WAYANAD DISTRICT.

BY ADVS.SRI.P.K.RAMKUMAR
SMT.ANITHA MENON
SRI.M.N.VASU
SRI.M.S.SAJI
SRI.E.S.JOHNY SCARIA

RESPONDENT(S) :-

1. THE STATE OF KERALA
REP. BY ITS SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
(THE COMPETENT AUTHORITY FOR ISSUING ESSENTIALITY
CERTIFICATE FOR STARTING MEDICAL COLLEGES)
2. THE MEDICAL COUNCIL OF INDIA,
REP. BY ITS SECRETARY, SECTOR 8, POCKET 14, DWARAKA
NEW DELHI-110 077.
3. DR. AASAD MOOPAN, AGED 59 YEARS, S/O.AHMED UNNI MOOPAN,
THE CHAIRMAN AND MANAGING TRUSTEE
DM EDUCATION FOUNDATION TRUST, 28/927, KAVU STOP
CHEVAYOOR, CALICUT - 673 017.

4. UTTERI BASHEER, AGED 53 YEARS, S/O.E.P.ALIKUTTY,
MAYAN PLACE, CHALAPPURAM, CALICUT- 673 002.

5. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE, NEW DELHI.

R2 BY ADV. SRI.TITUS MANI VETOM, SC, MCI
R5 BY ADV. SRI.N.NAGARESH, ASG OF INDIA
R1 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
R3 BY ADV. SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.DEVAPRASANTH.P.J.
BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
P.R.RAMACHANDRA MENON, J.**

W.P.(C) No.27033 of 2012

Dated this the 7th day of August 2015

J U D G M E N T

Ramachandra Menon, J.

The only prayer sought for by the petitioner in this writ petition, which is preferred as Public Interest Litigation, is to call for the records relating to Ext.P1 Essentiality Certificate bearing registration No.38635/S3/2010/H&FWD dated 13.9.2010 and to set aside the same.

2. The main contention raised by the petitioner is that at present there is no requirement so as to set up a medical college, for which, Essentiality Certificate has been issued by the Government without adhering to the relevant norms, particularly, without any inspection to satisfy the relevant requirements.

3. The first respondent has filed a counter affidavit pointing out the circumstances under which the certificate has been issued. The contentions as contained in paragraphs 4, 5 and 6 in the counter affidavit are in the following lines :-

“4. Usually, Essentiality Certificate for starting a new Medical College is issued by the State Government

after conducting an inspection at the institution to assess the feasibility of the project. The Essentiality Certificate is a mandatory document for trust/institution to apply before the Medical Council of India. Even though the State Government issues Essentiality Certificate, the Medical College can be started only after the inspection by the Medical Council of India. The Medical Council of India, after due inspection recommends to the Government of India to issue 'Letter of Permission' for starting the new Medical College. The Medical Council of India is the ultimate authority to inspect the land and other infrastructure facilities as per the prescribed norms and to take a final decision whether to grant permission to start a new Medical College or not.

5. In the case of DM Education and Research Foundation, Government have taken a policy decision and issued Essentiality Certificate, without any inspection considering the fact that Wayanad District has a large number of tribal population and quality health care treatment at affordable cost is most essential need of the people there. Also the recommendations of the people's representatives of Wayanad District were taken into account. The Essentiality Certificate was issued to the trust after remitting the required application and processing fee. The Essentiality Certificate was also issued by the then Secretary of Health & Family Welfare Department. Hence, the Essentiality Certificate is not obtained fraudulently as alleged by the petitioner.

6. It is submitted that the Essentiality Certificates to various trusts for starting new Medical Colleges are being issued in Form 2 as prescribed by the Medical Council of India. The Essentiality Certificate issued by the State Government states the reasons by which the new Medical College by a particular trust is essential to the State. As per the Certificate, it is mandatory to specify that the Trust owns and manages a Hospital with atleast 300 beds. Otherwise the Medical Council of India will not accept the application for starting new Medical College. In the circumstances, State Government issues Essentiality Certificates to the Trusts, valid for two academic years, stating that they possesses adequate infrastructure facilities including 300 or above bedded hospital, in anticipation that the Trusts will fulfill all the requirements before the inspection of the Medical Council of India. Therefore, the State Government takes care to ascertain reliability and financial soundness of the promotees before issuing the certificate. The State Government issues Essentiality Certificate at an initial stage, in assumption that the Medical Council will verify the bed strength and other facilities required during their inspection and take a final decision regarding the permission to start a new Medical College. The Medical Council of India is the final authority to grant permission to the Trusts, who fail to complete the requirements within that time frame, again apply for renewal of essentiality certificate further. Since State Government has to give a commitment that if the applicant fails to create

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infrastructure facilities and fresh admissions are stopped by the Central Government the State shall take over the responsibility of the students already admitted, the State Government has to be satisfied regarding the ability of the promotees to manage a Medical College.”

4. Heard both sides.

5. During the course of hearing, it is brought to the notice of this Court by the learned Senior Counsel appearing for the party respondents that the Essentiality Certificate, which is under challenge in this writ petition was valid only for a period of two years and the same is already over. It is also stated that subsequently, on satisfying the requirements, a fresh Essentiality Certificate was issued by the Government, based on which, further proceedings were taken to admission to the students, who are pursuing their studies in the concerned college.

6. After hearing both sides and considering the nature of relief sought for in this writ petition, this Court finds that, the writ petition, having not been caused to be amended by the petitioner, the only relief sought for by the petitioner relating to challenge against Ext.P1 Essentiality Certificate no more survives, as its validity period is already over.

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Under such circumstances, the writ petition has virtually become infructuous. Accordingly, the same is dismissed as infructuous.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Jvt