

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 26034 of 2014 (D)

PETITIONERS :

**BELIEVERS CHURCH OF INDIA, MANJADI
THIRUVALLA REPRESENTED BY MOST. REV.DR.K.P.YOHANNAN
METROPOLITAN BISHOP, BELIEVERS CHURCH
PRESIDENT AND MANAGING TRUSTEE THROUGH HIS POWER
OF ATTORNEY HOLDER JACOB POTHEN
GENERAL ADMINISTRATOR, GOSPEL FOR ASIA, MANJADI
THIRUVALLA
PRESENTLY WORKING AS GENERAL ADMINISTRATOR,
BELIEVERS CHURCH INDIA, MANJADI P.O., THIRUVALLA.**

**BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.P.HARIDAS
SMT.S.SIKKY
SRI.P.C.SHIJIN
SRI.CHERIAN GEE VARGHESE**

RESPONDENTS :

- 1. KERALA UNIVERSITY OF HEALTH SCIENCES
REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE P.O.,
THRISSUR - 688 001.**
- 2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY DEPARTMENT OF
HEALTH & FAMILY WELFARE SECRETARIAT,
THRIUVANANTHAPURAM - 695 001.**
- 3. UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH
CENTRAL SECRETARIAT, NEW DELHI - 110 001.**
- 4. MEDICAL COUNCIL OF INDIA
REPRESENTED BY ITS SECRETARY, NEW DELHI - 110 001.**

**R1 BY ADV. SRI.P.SREEKUMAR,SC,
R2 BY GOVERNMENT PLEADER SRI. SAIDALAVI
R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY ADV. SRI.TITUS MANI VETOM, SC, MEDICAL COUNCIL OF INDIA
BY SRI.TITUS MANI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/04/2015, THE COURT ON 28-05-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE OCCUPANCY CERTIFICATE DATED 03.12.2013.
- EXHIBIT P2: TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 28.02.2011.
- EXHIBIT P3: TRUE COPY OF THE ESSENTIALITY CERTIFICATE ISSUED BY GOVERNMENT OF KERALA DATED 25.09.2014.
- EXHIBIT P4: TRUE COPY OF THE MEDICAL COUNCIL OF INDIA ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS 1999 AMENDED UPTO MARCH 2014 DATED 30.07.1999.
- EXHIBIT P5: TRUE COPY OF THE ABSTRACT DATED 23.01.2013.
- EXHIBIT P6: TRUE COPY OF THE APPLICATION UNDATED.
- EXHIBIT P7: TRUE COPY OF THE LETTER OF THE 1ST RESPONDENT DATED 25.09.2014
- EXHIBIT P8: TRUE COPY OF THE LETTER ADDRESSED TO 1ST RESPONDENT LETTER DATED 26.09.2014.
- EXHIBIT P9: TRUE COPY OF THE LETTER OF THE RESPONDENT DATED 29.09.2014.
- EXHIBIT P10: TRUE COPY OF THE CIRCULAR DATED 22.10.2009.
- EXHIBIT P11: TRUE COPY OF THE LETTER ADDRESSED TO THE 3RD RESPONDENT DATED 30.09.2014.
- EXHIBIT P12: TRUE COPY OF THE LETTER ADDRESSED TO 4TH RESPONDENT DATED 30.09.2014.
- EXHIBIT P13: COPY OF NORMS FIXED BY THE MEDICAL COUNCIL AVAILABLE IN THE WEBSITE OF IT.
- EXHIBIT P14: COPY OF THE COMMUNICATION SENT TO THE UNIVERSITIES AND PUBLISHED IN WEBSITE.
- EXHIBIT P15: COPY OF THE MINUTES OF THE EXECUTIVE COMMITTEE OF MEDICAL COUNCIL OF INDIA DT 14/3/2014 (RELEVANT PORTION)
- EXHIBIT P16: COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE EXECUTIVE COMMITTEE OF MEDICAL COUNCIL OF INDIA DT 13/6/2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

C.R.

A.V.RAMAKRISHNA PILLAI, J

WPC No.26034 of 2014

Dated this the 28th day of May, 2015

JUDGMENT

The petitioner, which is a public religious charitable trust engaged in various religious and charitable activities, has approached this Court with this writ petition aggrieved by clause 3(1) of paragraph 1 of Ext.P5 as well as Ext.P7 as the same insists the petitioner who proposed to start a new medical college to produce outpatient and inpatient registers for the past three years and evidence to show that the hospital has been running for the past three years. The petitioner is seeking a positive direction to the first respondent to consider and pass orders on the petitioner's application for consent of affiliation/NOC without insisting for the aforesaid requirements.

2. The petitioner trust alleges that it has

established a teaching hospital as well as a medical college having facilities and beds to treat more than 500 inpatients at a time and also to treat outpatients. According to the petitioner trust, they have installed all necessary equipments and infrastructure for running such a hospital as per the norms prescribed by the Medical Council of India and the hospital is having departments of general medicine, general surgery, pediatrics, obstetrics and Gynecology, anesthesiology, ENT, Ophthalmology, dermatology, radiology and other departments as per MCI norms. The petitioner further alleges that sufficient doctors (medical and paramedical) and other staffs were appointed. They applied for the establishment of a new medical college and hospital as per the rules and regulations as well as the norms prescribed by the Medical Council of India. The petitioner obtained Ext.P2 NOC and Ext.P3 essentiality certificate from the State Government. Thereafter the petitioner applied for consent of affiliation before the first respondent

university as per Ext.P6 and the first respondent set up an inspection team who visited the hospital. Thereafter the first respondent directed the petitioner to submit the approval of local body, site plan, building plan, OP and IP register for the past three years referring to clause 3(1) of paragraph-1 of Ext.P5. The petitioner gave a reply stating that it owns and manages the hospital having more than 300 beds. However, as per Ext.P9, the first respondent informed the petitioner that the application cannot be processed in view of clause 3(2) of paragraph-1 of Ext.P5. According to the petitioner, the regulations of the medical council or any statutes do not prescribe such a condition. According to the petitioner, it is mandatory for every university to strictly follow the provision of Establishment of Medical College Regulations 1999 amended up to date while issuing the consent of affiliation certificate. According to the petitioner, the only condition is that there should be a running hospital having 300 beds which can be

converted into teaching hospital. The petitioner further submits that Exts.P11 and P12 requests were sent to respondents 3 and 4 respectively to clarify that the petitioner's application is in conformity with Ext.P5 regulation. The petitioner also alleges that the first respondent had already given affiliation to other medical colleges without insisting to own a hospital running for previous 3 years and the petitioner was singled out which is arbitrary.

3. The first respondent filed a statement wherein it was contended that one among the prescriptions necessary for conducting a medical college is the availability of a hospital having a specified number of beds and a specified rate of bed occupancy in the hospital. In order to ensure that the first respondent university as well as the 5th respondent conducts inspections and verifies different aspects. It was noticed that in several colleges, the maintenance of the prescribed bed strength and the student patient ratio is not proper and the same is affecting the

proper training of students in those colleges. A hospital whether 300 bedded or even above may not have sufficient patients during the initial years and the patient strength would increase only in due course. This practical aspect appealed to the wisdom of the experts and the condition as found in Ext.P5 was incorporated. It was further contended that the first respondent university has not encroached upon the authority of the 5th respondent, but it had only fixed a standard for considering the application so as to ensure the availability of the infrastructural facilities to impart proper training for students. According to the first respondent, the importance of a full-fledged hospital with sufficient bed strength cannot be undermined. Therefore, they prayed for a dismissal of the writ petition.

4. The petitioner filed a detailed reply affidavit refuting the averments in the statement filed by the respondent University.

5. I have heard Mr.R.D.Shenoi, the learned senior

counsel for the petitioner, Mr.N.Nagaresh, the learned Assistant Solicitor General, Mr.Titus Mani the learned standing counsel for the Medical Council of India, Mr.P.Sreekumar, the learned standing counsel for the first respondent university and Mr.Saidalavi, the learned Government Pleader in the matter.

6. The only question that has to be considered in this case is whether the first respondent university is competent to insist the petitioner, who has applied for consent of affiliation/NOC to the first respondent to own a hospital which has been running for the past three years.

7. The definite stand taken by the petitioner is that the first respondent university cannot insist for such a condition which has not been prescribed by the Medical Council of India. Mr.R.D.Shenoy, the learned senior counsel would argue that the Medical Council of India Regulations 1999 amended up to date has not stipulated that in order to start a medical college, ownership of the hospital which has been running for

past three years is necessary.

8. Mr.P.Sreekumar, the learned standing counsel for the first respondent university, per contra, would submit that simultaneous commencement of the hospital and medical college is not permitted. According to Mr.P.Sreekumar, in the field of medical education, a full-fledged hospital is mandatory. It was further argued that the respondent university prefers quality to quantity in the matter of establishment in the medical colleges. The 5th respondent insists for physical verification and satisfaction before issuing consent of affiliation. Therefore, this was also taken into account while taking a decision by the first respondent to insist for a minimum history for the hospital which is proposed to be converted into a teaching institution; so submitted Mr.P.Sreekumar.

9. In support of his argument, Mr.P.Sreekumar invited my attention to the decision of this Court in ***Ashar v Kerala University of Health Sciences*** (2014(1) KLT 969) where it was observed that the

standard fixed by the medical council purports to be the minimum standard and nothing prevents the respondent university from prescribing higher standards.

10. Ext.P5 was seriously attacked by the learned counsel for the petitioner on the ground of legislative incompetency. It was submitted that the same was one issued by the academic council of the university which is constituted by the heads of various medical colleges under the first respondent. It was further argued that Ext.P5 is against the policy of the Government of India and Medical Council of India which wants to promote establishment of new colleges in the country to have sufficient number of doctors in India and therefore, they are periodically revising the minimum standard for establishing a medical college patient/doctor ratio by producing more doctors in the country. The first respondent has not appreciated that producing doctors are for the benefit of the entire nation, not for territory Kerala alone and the State

itself has got shortage of doctors as per the population ratio which is evident from the essentiality certificate issued by the Government of Kerala; so submitted the learned counsel for the petitioner.

11. There cannot be any dispute that it is mandatory to follow the rules and regulations prescribed by the MCI in the matter of opening new medical colleges. It is relevant to note that the expert team of the first respondent had conducted an inspection of the petitioner's hospital and to the knowledge of the petitioner that the said team was satisfied with the facilities of the hospital. The Medical Council of India has strictly prescribed the norms to be observed for processing the application and for renewal of the application every year till the recognition of the course at the end of the 5th year. The standards of infrastructure, availability of the beds as well as the percentage of occupancy of the beds for every year have been specified. The renewal and recognition would be subject to the periodical

inspection by the Medical Council. This is evident from Ext.P13 which is the true copy of the norms fixed by the Medical council which is available in the Website.

12. Ext.P13 standards were fixed taking into account of the requirements of the clinical training of students which commenced only after 1½ years. Commencement of admissions will start only one year after filing of applications. Hence, clinical training will commence 2½ years after starting the hospital. Therefore, an increase in the bed strength and the percentage of occupancy are prescribed year by year by Ext.P13.

13. Now, the question is whether the first respondent is competent to prescribe any additional norms and standards claiming it as a vacuum in Ext.P4 regulations. The decision in **Ashar's case** (supra) cannot be made applicable to the present case because in that case, the writ petitioners were challenging an additional requirement imposed by the

university that apart from obtaining 50% marks in theory and viva voce together, the student must also obtain separate minimum in theory alone whereas the regulations made by the Medical Council of India was that out of 200 marks, a student must obtain 50% marks which includes viva voce and 50% marks in practical. Analysing the situation, this Court observed that it is within the competency of the University to prescribe high standards in such matters. This is a case where the medical council who is competent to consider whether the petitioner who is a new entrant into the field of medical education is having sufficient infrastructural facilities as prescribed by the norms. By Ext.P3, the Government of Kerala has issued essentiality certificate. Though the first respondent university is competent to prescribe the curriculum and syllabi for the course, they are not competent to insist about the historical aspects of the hospital. The university cannot add or reduce the standard or norms prescribed by the Medical Council of India.

14. It is crucial to note that the petitioner has furnished two bank guarantees, one for Rs.550 lakhs for maintaining 500 bedded teaching hospital and 200 lakhs for infrastructural facilities for the medical council to admit 150 students. If the medical council on periodical inspection finds that any of the conditions including one prescribed in Ext.P13 is violated, they would invoke the bank guarantee and under such circumstances, the State Government would take care of the students in terms of the essentiality certificate. The norms and modalities are fixed by the experts of the medical council and by the Central Government having legislative competence. The required bed occupancy for every year also was fixed by the medical council and the same is subject to inspection and verification every year. The petitioner is entitled to get affiliation as long as it complies with the regulation and norms of Medical Council and it is mandatory on the part of university to provide affiliation.

15. The learned senior counsel for the petitioner also relied on Ext.P14 which would indicate that it was noticed by the Medical Council of India that some universities are prescribing some additional standards and norms. Hence, the Medical Council instructed all universities to strictly follow the provisions of Establishment of Medical College Regulations. Ext.P14 is the true copy of the communication so sent by the Medical Council of India to the universities. Even after the consent of affiliation is issued by the respondent university, the Medical Council of India would conduct inspection and only upon satisfying the standards of the institution, the matter would be placed before the executive committee of the medical council and only on the basis of the decision taken by the executive committee, permission would be granted to start the medical college as evident from Ext.P15 which is the true copy of the relevant minutes of the executive committee of the Medical Council of India dated 14.3.2014.

16. On a consideration of the materials now placed on record, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, this writ petition is allowed. Clause 3(1) of Part 1 of Ext.P5 as well as Ext.P7 are quashed, in so far as it insists the petitioner to produce outpatient and inpatient registers for the past three years and to produce evidence to show that the hospital was running for the past three years.

The first respondent is directed to consider and pass orders on the petitioner's application for consent of affiliation/NOC without insisting that the petitioner's hospital should have been running for the past three years. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE