

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 29462 of 2014 (G)

PETITIONER(S):

**V.N PUBLIC HEALTH AND EDUCATION TRUST
REPRESENTED BY ITS MANAGING TRUSTEE- SECRETARY
DR.O.KANAPPAN, NO.25, JAWAHAR
MAIN ROAD, N.R.T.NAGAR, THENI
TAMIL NADU - 625 531.**

**BY ADVS.SRI.P.SANJAY
SMT.A.PARVATHI MENON**

RESPONDENT(S):

**1. UNION OF INDIA
REPRESENTED BY SECRETARY TO THE GOVERNMENT
MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAN BHAVAN
NEW DELHI.**

**2. THE KERALA UNIVERSITY OF HEALTH AND ALLIED SCIENCES,
REPRESENTED BY THE REGISTRAR
THE KERALA UNIVERSITY OF HEALTH AND ALLIED SCIENCES
MEDICAL COLLEGE P.O., THRISSUR.**

**Addl.3. MEDICAL COUNCIL OF INDIA
REPRESENTED BY ITS SECRETARY, POCKET - 14, SECTOR 8
DWARKA, PHASE-1, NEW DELHI - 110 075.**

ADDL.R3 IMPEADED AS PER ORDER DATED 28.01.2015 IN IA 151/15.

**R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.P.SREEKUMAR, SC, KERALA UTY. HEALTH & ALLIED SCIENCES
R3 BY ADV. SRI.TITUS MANI VETOM, SC, MEDICAL COUNCIL OF INDIA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/5/15, ALONG
WITH WA. 462/2015 & WPC. 529/2015, THE COURT ON 2/6/15 DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE ESSENTIALITY CERTIFICATE NO.18681/S3/2014/H&FWD DATED 10/6/2014.
- P2: TRUE COPY OF THE CONSENT OF AFFILITION NO.2772/AC.11/2010/KUHS DATED 2/8/2011.
- P3: TRUE COPY OF THE PROPOSAL FOR THE ESTABLISHMENT OF COLLEGE DATED 27/8/2014.
- P4: TRUE COPY OF THE LETTER FROM THE 1ST RESPONDENT DATED 17/10/2014.
- P5: TRUE COPY OF THE LETTER NO.MCI-34(41)/2012-MED/156303 OF REJECTION FOR THE YEAR 2013-2014 DATED 28/01/2013.
- P6: TRUE COPY OF THE LETTER ASKING THE 1ST RESPONDENT TO LOOK INTO THE MATTER AND NOT TO REJECT THE CONSENT OF AFFILIATION DATED 4/11/2014.
- P7: TRUE COPY OF A SIMILAR CONSENT OF THE VARIATION NO.15-ACADEMIC/2010/KUHAS ISSUED TO ANOTHER COLLEGE I.E SREE ANJANEYA MEDICAL TRUST KNOWN AS MALABAR MEDICAL COLLEGE DATED 20/02/2010.
- P8: TRUE COPY OF THE REQUEST DATED 31/10/2014.
- P9: TRUE COPY OF ORDER dated 7.8.14.
- P10: TRUE COPY OF DECISION OF THE KARNATAKA HIGH COURT IN CHILDREN'S EDUCATION SOCIETY AND ANOTHER VERSUS UNION OF INDIA AND ANOTHER IN W.P (C) No. NO.28331 AND 28332/2013.
- P11: TRUE COPY OF ORDER dated 10.6.11 IN LPA 544/11.
- P12: TRUE COPY OF ORDER dated 14.7.11 OF THE HON'BLE HIGH COURT OF DELHI IN LPA 544/11.
- P13: TRUE COPY OF ORDER dated 21.7.11 IN LPA 544/11.
- P14: TRUE COPY OF JUDGMENT OF THE HON'BLE HIGH COURT OF MADRAS IN WANO.623/2008.
- P15: TRUE COPY OF THE LETTER NO.MCI-34(11)/2011-MED/7920 OF REJECTION FOR THE YEAR 2012-13 dated 5.5.11.
- P16: TRUE COPY OF THE LETTER NO.MCI-34(41) E-96/MED/53449 OF REJECTION FOR THE YEAR 2014-15.
- P17: TRUE COPY OF THE REPRESENTATION NO.ODAYAPPA/MCI/02/2014 dated 24.6.14.
- P18: TRUE COPY OF THE COMMUNICATION dated 12.1.12.
- P19: TRUE COPY OF THE CONSENT OF AFFILIAITON NO.1705/AC.1/1/2011/KUHS dated 12.4.12 ISSUED TO SOUTHERN INSTITUTE OF MEDICAL SCIENCES OF RUCKMONI MEMORIAL CHARITABLE EDUCATIONAL HEALTH TRUST.
- P20: TRUE COPY OF THE LETTER NO.RMCEHT-617/04/12 dated 26.4.12 ADDRESSED TO THE MCI.
- P21: TRUE COPY OF THE COMMUNICATION NO.MCI-34(41)2012-MED/DATED 19.4.12.
- P22: TRUE COPY OF THE LETTER dated 22.1.13 TO THE APPLICANT.

P23: TRUE COPY OF THE LETTER NO.MCI-34(41)(E-85)/2013-MED dated 2.7.13.

P24: TRUE COPY OF THE LETTER NO.MCI-34(41)(E-85)/2013-MED OF REJECTION DATED 11.7.13.

RESPONDENT(S)' EXHIBITS

ANNEX. A: TRUE COPY OF THE LETTER ADDRESSED TO THE CALICUT UNIVERSITY dated 12.5.14 BY V N PUBLIC HEALTH AND EDUCATIONAL TRUST.

ANNEX.R2B: TRUE COPY OF THE LETTER dated 3.11.14 ADDRESSED TO THE UNIVERSITY OF CALICUT.

Rp

//True Copy//

PA to Judge

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.P (C) Nos.29462/2014, 529/2015 &

WA No.462 of 2015

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Dated this, the 2nd day of June, 2015

J U D G M E N T

Shaffique, J.

Writ Appeal 462/15 is filed by the petitioner in WP(C) No. 29462/14 challenging an interim order dated 28/1/15 in IA No.391/15 vacating the earlier interim order dated 22/11/14. During the course of hearing, it was brought to our notice by the parties that the appellant had filed another writ petition as W.P (C) No. 529/15. Since it was submitted that urgent orders are required to be passed in the appeal, with the consent of parties, we have decided to hear the writ petitions also and therefore, the writ petitions as well as the writ appeal are decided by a common judgment. In fact, the fate of the writ appeal will depend upon the decision in the writ petitions.

2. The brief facts which had given rise to these writ petitions are under;

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Petitioner claiming to have a 300 bedded hospital was trying to establish a Medical College since 2010. Petitioner obtained an Essentiality certificate dated 10/6/14 from the Government of Kerala by which the Government permitted the petitioner to establish a Medical College on certain conditions specified therein. The said Essentiality certificate is valid for the academic year 2014-2015 and 2015-2016. Petitioner obtained consent of affiliation as Ext.P2 dated 2/8/2011 from the University of Health and Allied Sciences (hereinafter referred as University). According to the petitioner, it was valid from 2012-2013 without any expiry date as such. Petitioner sent a proposal for establishing Medical College with the above said documents for the academic year 2015-16. The same was returned by the Central Government as per Ext.P4 letter dated 17/10/2014, stating that the consent of affiliation was not valid for the year 2015-16. Petitioner submits that it had submitted the very same consent of affiliation from the University while submitting the application for previous years, but, the rejection was on other grounds. Petitioner submitted a representation to the 1st

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respondent Central Government to look into the matter but it was without any response. Petitioner has a contention that 2nd respondent University has been issuing consent of affiliation in the very same format for all colleges in the State of Kerala which has been accepted by the 1st respondent many a times, even though the period was not specifically mentioned. Petitioner however submitted an application dated 31/10/2014 to the 2nd respondent University to issue the consent of affiliation for the academic year 2015-2016. Petitioner apprehending that there will be delay on the part of the Central Government in processing their application and forwarding the same to Medical Council of India (for short MCI) and to avoid the delay in inspection by MCI, this writ petition is filed seeking to quash Ext.P4 letter dated 17/10/2014 issued by the 1st respondent and for a direction to the 1st respondent to forward their application to MCI for further processing. Petitioner also sought for a direction to the 2nd respondent to issue consent of affiliation afresh as directed by the 1st respondent.

3. Statement was filed by the 2nd respondent University

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inter alia stating that consent of affiliation is issued after conducting local inspection and it is valid only for a period of two years. While issuing the consent of affiliation, University is expected to ensure that all the facilities are available in the institution and long lapse of time can result in loss of facilities which were available at the time of inspection. Therefore, the petitioner was bound to obtain fresh consent of affiliation from the University.

4. By interim order dated 22/11/2014, the learned Single Judge having formed an opinion that the letter of consent has been issued by the University only for the academic year 2012-2013, issued a direction to the 1st respondent to provisionally forward the scheme submitted by the petitioner to MCI and University was directed to conduct an inspection within a period of one month and to file a report as to whether the facilities are still available. It was also made clear that the order will not enable the petitioner to claim any equity and the order will be subject to the result in the writ petition.

5. MCI filed an application for impleading along with an

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application as IA No.391/15 to vacate the interim order. Based on the contentions urged by the MCI, the learned Single Judge by order dated 28/1/2015 allowed the impleading petition and vacated the interim order dated 22/11/2014.

6. WP(C) No. 529/15 is filed by the very same writ petitioner on the very same set of allegations . Reliance was placed on the interim order dated 22/11/2014 and it is contended that though the application was forwarded to the 1st respondent as per letter dated 5/12/2014 along with a copy of the order and further representations were sent to MCI as well as the Central Government, no steps were taken in the matter and hence the petitioner sought for a direction to the 3rd respondent, MCI, to consider his application for the year 2015-2016 forwarded by the 1st respondent as per Ext.P9 dated 5/12/2014 based on interim order dated 22/11/2014 and to consider and pass appropriate orders. In fact, going by the averments in WP(C) No. 529/15, it is a continuation of the interim order dated 22/11/2014 which was later vacated by the learned Single Judge by order dated 28/1/2015. Therefore, the basis of the said writ petition having

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been set aside, there is no reason to proceed with the said writ petition and the same is liable to be dismissed. Therefore, the only question that arises is regarding the merits of the claim made in W.P (C) No. 29462/14.

7. The main contention urged by the petitioner is that, in Ext.P2 consent of affiliation issued by the University, no specific time limit has been mentioned and therefore, Central Government was not justified in returning the proposal in terms of Ext.P4 memo. Reference was made by the learned counsel based on Section 10A of the Indian Medical Council Act, 1956 and it is contended that the Central Government had no power to reject an application. It is argued that Central Government was bound to forward the entire scheme/proposal for establishing the College to MCI, who was bound to conduct necessary inspection. While evaluating the scheme of an applicant, MCI has the power to call upon the applicant to produce sufficient materials and give time to cure the defects if any. If at all it was a case where the consent of affiliation produced by the applicant was not valid, still, MCI ought to have granted time to produce fresh certificate. As far as

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the University is concerned, when a fresh application was submitted on 31/10/2014, no steps were taken by them to conduct inspection or issue consent in the matter.

8. Learned counsel submits that the last date for the Central Government to issue letter of permission being 15/6/2015, it is possible for MCI even at this stage to conduct appropriate inspection and give a report to the Central Government for consideration. As far as the University is concerned, they could also conduct necessary parallel inspection and issue the consent of affiliation if the College has all the facilities as required under the relevant statutory provisions.

9. On the other hand, it is argued on behalf of MCI that the time limit for receipt of applications by MCI from the Central Government was 30th September and recommendations of MCI ought to have been given to the Central Government for issue of Letter of Intent by 15th December. The Central Government had to issue Letter of Intent by 15th January. By 15th February, Central Government has to receive a reply from the applicant requesting for Letter of Permission. By 1st March, MCI has to receive a letter

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from Central Government for consideration for issue of Letter of Permission and by 15th May, MCI has to give a recommendation to Central Government for issue of Letter of Permission and the Letter of Permission is to be granted by the Central Government by 15th June. It is submitted that even though the last date of Letter of Permission by Central Government being on 15th June, none of the formalities for conducting inspection and other procedural requirement has been complied with. Further, learned counsel relies upon the judgment of the Supreme Court in **Mridul Dhar & another v. Union of India and others** {(2005) 2 SCC 65} and **Priya Gupta v. State of Chandigarh** {(2012) 7 SCC 433} to contend that the statutory time limit fixed by the Central Government as per regulations cannot be meddled with. It is argued that consent of affiliation is a basic document that should accompany the application and it is well within the power of the Central Government to reject an application which is not complete in all particulars.

10. The learned counsel appearing for the University further submits that there is some internal dispute between the

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members of the petitioner Trust and the University had received two letters dated 12/5/2014 and 3/11/2014 which indicates certain dispute between the members of the Trust and therefore University is still not in a position to say as to who is the actual person managing the affairs of the Trust. Further, it is reiterated that Ext.P2 by itself would indicate that the consent of affiliation was given only for establishing the Medical College in the academic year 2012-13. It is therefore argued that unless the petitioner satisfies the University regarding the availability of facilities, it is not open for the University to issue consent of affiliation. It is submitted that as matters stand now, the petitioner cannot aspire to get consent of affiliation for the present academic year 2015-16 and can aspire only for considering affiliation application for the next academic year, i.e., 2016-17 and appropriate inspection can be carried out at the request of the competent person of the petitioner Trust.

11. Having due regard to the aforesaid factual and legal issues involved in the matter, the short question to be considered is whether Ext.P4 is liable to be set aside for any reason and even

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after the lapse of time for conducting inspection by MCI and the University, whether this Court should issue directions to complete the process within the date fixed for the Central Government to issue Letter of Permission.

12. Ext.P2 is the letter of consent dated 2/8/11 issued by the University. The said consent reads as under.

“On the basis of the report of the Local Inquiry Committee, the Kerala University of Health Sciences has agreed, in principle, to Affiliate the proposed Medical College to be established in 2012-13 by the V.N.Public Health & Educational Trust, Old No.11, New No.25, Jawahar Main Road, NRT Nagar, Theni - 625531, Tamilnadu for starting New Medical College at Walayar, Palakkad Taluk & District, Kerala, subject to the grant of permission by Government of India, Ministry of Health and Family Welfare, New Delhi under Section 10(A) of the Indian Medical Council Act, 1956 (102 of 1956).”

13. It is therefore apparent that the consent was issued to establish the Medical College in 2012-13. We do not think that this consent can at any rate be used for submitting an application/proposal for establishing a Medical College in the year

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2015-2016. Learned counsel for the University submits that if a letter of consent is issued, it is normally valid for two years. Learned counsel placed before us a revised notification dated 21/12/2013 issued by the University relating to application for new colleges wherein the manner in which the applications are to be given for provisional affiliation with the University are prescribed. It also specifies the fee to be remitted for each course. It further states that the application with prescribed fee is valid for two years. Going by the above notification itself, it is rather clear that once a consent of affiliation is granted, it cannot remain in force for several years unless otherwise stated in the consent itself. One cannot proceed on the basis that consent given for the academic year 2012-2013 will be valid for another academic year. Therefore, it is apparent that Ext.P2 submitted by the petitioner along with the proposal was not a valid consent of affiliation which could be made available for the academic year 2015-2016.

14. The larger issue canvassed by the learned counsel for the petitioner is whether the Central Government was entitled to issue Ext.P4 calling upon the petitioner to produce a valid consent

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of affiliation. Learned counsel points out that Ext.P4 has been issued without application of mind and there is mistake regarding the place where the institution is to be set up. Further, referring to Section 10A of the Indian Medical Council Act, it is submitted that Central Government was not empowered to return the proposal. In fact, in Ext.P4 memo, Central Government opined that the proposal did not contain the valid consent of affiliation for the year 2015-2016. This reason is apparently correct and the only point is whether Central Government should have issued such a letter.

15. Section 10A of the Indian Medical Council Act reads as under;

“10A. Permission for establishment of new medical college, new course of study.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force:-

a) no person shall establish a medical college; or

b) no medical college shall -

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or

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training to qualify himself for the award of any recognised medical qualification; or

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

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

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

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-Section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be

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preferred in such manner and be accompanied with such fee as may be prescribed.

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

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

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

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-Section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-Section (7), either approve (with such conditions, if any, as it may consider necessary) or

disapprove the scheme and any such approval shall be a permission under sub-Section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub Section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this Section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-Section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-Section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-Section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-Section (5), the time taken by the person or college

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concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

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

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

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

c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity,

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have been provided or would be provided within the time-limit specified in the scheme;

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

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

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

g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this Section, a copy of the order shall be communicated to the person or college concerned.”

16. Going by the aforesaid statutory provision, we do not think that it is purely within the discretion of MCI to verify whether the application is in proper form. Central Government is the authority to grant Letter of Permission. Central Government

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cannot act as a post office while forwarding the proposal to MCI. Central Government has to ensure whether the application is in proper format and whether it complies with the statutory provisions. Only if the application is complete in all particulars, it is necessary for Central Government to forward the same to MCI. MCI's obligation is further to verify whether the particulars mentioned in the application are correct and to conduct necessary inspection regarding the same and if there is any deficiency, to give an opportunity to the applicant to cure the deficiency etc.,. As far as the basic documents are concerned, like Essentiality certificate, Consent of affiliation, proper fee etc., it is for the Central Government to verify whether the documents are in proper form and are available. If the documents are not in the proper format and are deficient, there is nothing wrong in the Central Government rejecting the said application. The reason for fixing the time limit, is to enable the Central Government to ensure that appropriate verification and inspection of the Colleges who proposes to establish Medical Colleges, to enhance the seats, add new courses etc., are properly considered. Under such

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circumstances, we do not think that the contention urged on behalf of the petitioner that the Central Government had no power to reject the application is justified.

17. Learned counsel places reliance upon a few judgments to contend that sufficient time has been granted by the High Courts in similar situations. He refers to judgment of the Delhi High Court in ***Gold Field Shiksha Sanstha (Smt. Shashi Adlakha) v. Union of India and another*** where in an interim direction has been given by the High Court to comply with the verification and to place a report despite the fact that the time specified has been over. That was a case in which the application was filed by an existing institution seeking renewal of permission for the academic year 2014-2015. MCI conducted inspection only on 23/4/2014 and 24/4/2014 and the matter was communicated to Union of India only on 15/7/2014. Such a factual situation does not arise in the present case as this is an instance where the petitioner themselves were at fault. Only in an instance where there is no fault on the part of the applicant and there is delay on the part of the statutory authorities, the Court may exercise the

jurisdiction to extend the time. Such a situation has not arisen in this case. Similarly, other judgments produced as Exts.P10 to P14 have no application to the factual circumstances involved in the matter. This is a case where the petitioner themselves did not produce all necessary documents along with the proposal and therefore, petitioner cannot claim any equity from this Court.

18. Another issue pointed out by the University was regarding the internal dispute between the members of the Trust. Learned counsel for the petitioner however placed before us the judgment in Civil Miscellaneous Appeal Nos.97/2008 and 71/2009 of the District Court, Palakkad, by which, according to the petitioner, they have the right to manage the institution. We do not intend to decide on the controversy or the right of the representative of the Trust to seek consent of affiliation. If the University has any doubt and needs any clarification, they have the right to question the same and it is for the petitioner to give necessary clarification regarding the same.

19. Having regard to the aforesaid finding of ours, we do not think that the petitioner is entitled for any relief. Accordingly,

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writ petition is also liable to be dismissed.

20. Since we have dismissed the writ petition on merits, there is no reason to entertain the writ appeal, which is filed challenging an interim order.

In the result, W.P (C) Nos.29462/2014, 529/2015 & WA No.462 of 2015 are dismissed. However, we observe that this judgment shall not stand in the way of the petitioner applying for establishing the College with necessary documents during the next academic year.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

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PA to Judge