

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14076 of 2015
Reserved on: 04.09.2015
Date of decision: 15.09.2015

Al-Falah University and another

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Akshay Bhan, Sr. Advocate,
with Mr. Alok Mittal, Advocate,
for the petitioners.

Mr. P.K. Jangra, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J.

Challenge in the present writ petition is to the order dated 07.07.2015 (Annexure P-26) passed by respondent no. 2-The Director General-Directorate of Medical Education & Research, Haryana (in short 'DREM') and for issuance of a writ in the nature of mandamus directing the respondents to issue the Essentiality Certificate (in short 'E.C.)/No Objection Certificate (in short 'NOC'). Vide the said order, the E.C./NOC in favour of the petitioners has not been issued for establishment of Medical Science and Research Center for the academic session 2015-16.

The reason which weighed for rejection is that the basic requirement was not being fulfilled as per the earlier inspection report namely that the proposed medical college did not have adequate clinical material as per the Council regulations as per sub-para (5) under Sr. No. 3 of the MCI guidelines. As per the said requirement, the applicant should have

a hospital of 300 beds and the petitioner's 300 bedded hospital was constructed in an area of 4500 sq. mts. and did not meet the requirement of Indian Public Health Standards (in short 'IPHS') and thus did not fulfill the standards and norms. The alleged requirement under IPHS was that the general hospital should have 80 to 85 sq. mts. per bed to calculate the total plinth area desirable which was to include waiting space, entrance hall, registration counter, hospital service buildings like generators, manifold rooms, boilers, laundry, kitchen and essential staff residences etc. and for a teaching hospital, the requirement was to be 100 to 110 sq. mts. per bed. Accordingly, the rejection was done.

The pleaded case of the petitioner is that the petitioner-Al-Falah University was granted the status of a Private University and was included in the list by the Haryana Private Universities (Amendment) Act, 2014. It was granted the status of minority educational institution under Section 2(g) of the National Commission for Minority Educational Institutions vide letter dated 30.09.2014 (Annexure P-1) and was declared to be a Muslim Minority Institution vide letter dated 20.10.2014 (Annexure P-2) by the Director General Higher Education, Haryana. The petitioners submitted a proposal to respondent no. 2 for establishment of a medical college in the name and style of Al-Falah School of Medical Science and Research Center at village Dhauj, Fatehpur Taga Road, Faridabad for the academic session 2015-16 on 11.08.2014 (Annexure P-3). Similarly, it applied on 26.08.2014 to the Secretary Health, Government of India, Ministry of Health and Family Welfare for issuance of a letter of intent for 150 seats of annual admission in the MBBS course alongwith the requisite fee of ₹7 lacs on the strength of the ownership of 26.7 acres of land which

had been earmarked for this purpose. A committee for inspection was set up by respondent no. 2 vide letter dated 01.09.2014 (Annexure P-5) and it was reconstituted vide letter dated 11.09.2014 (Annexure P-6) and was to be subsequently headed by respondent no. 2 himself. The date of inspection was fixed as 16.09.2014 and the inspection was done and the report was forwarded to the Secretary, Medical Education and Research on 22.09.2014 (Annexure P-7). The case was put up for approval but on account of Model Code of Conduct due to the Haryana Assembly Elections, 2014, the respondents, thought it appropriate to make a request to the Chief Electoral Officer, Haryana for granting relaxation since the last date for applying to the MCI/Central Government was 30.09.2014. Accordingly, in view of the non-issuance of the E.C., the proposal for establishment of the new medical college sent to the Union of India vide letter dated 26.08.2014 was returned on 16.10.2014 (Annexure P-11) with a rider that the fresh application could be submitted for the academic session 2016-17. The application was put up again on 27.10.2014, which remained under process and various meetings were held as to whether there was any policy of the Government of Haryana in the matter. Accordingly, a detailed note was prepared that it would be beneficial for the State as there were only 7 medical colleges (one Government, one Government aided and five private/private and deemed universities). The establishment would enhance the number of qualified doctors and doctor-patient ratio would improve.

The case was put up before the Minister concerned and it was ordered to be kept pending vide noting dated 12.03.2015. Request was again made on 27.03.2015 (Annexure P-17) that the Inspection Committee had inspected the Center and was satisfied with the facilities created for the

proposed medical college. The State Government's role was only recommendatory and limited to the issuance of an E.C. Approval of the medical college was to be granted by Government of India on the recommendations of the MCI and policies framed by it. The petitioner had invested a substantial amount for creating the hospital and the case was again put up with the noting that a policy be framed as earlier directed. The petitioner accordingly moved the National Commission for Minority Educational Institutions (for short 'NCMEI') with a prayer that there should be a direction to decide the application of the petitioner for grant of the E.C. within a period of 2 to 3 weeks on account of urgency. The same was opposed by filing a reply and eventually vide order dated 07.05.2015 (Annexure P-22), a direction was passed to issue the said certificate within 4 weeks from the service of the order. Resultantly, a request was made on 04.06.2015 for issuance of the said certificate which was followed up on 22.06.2015 and 27.06.2015 and resultantly, the impugned order was passed on 07.07.2015.

In the written statement filed by the respondents, the plea taken is that the case is bad for non-joinder of the necessary parties i.e. Medical Council of India (in short 'MCI') and the Ministry of Health and Family Welfare. The factum of the inspection report being forwarded to respondent no. 1 was admitted and the plea taken was that the hospital has only covered area of 4500 sq. mts. which is insufficient for hospital of 300 beds with necessary infrastructural facilities capable of development of a teaching institution. The area was less than the area recommended by the IPHS and the petitioners have themselves submitted that they will construct the proposed hospital measuring 28239 sq. mts. and, therefore, there was lack

of necessary infrastructural facilities. Fresh clarification has been sought from the Director, Shaheed Hassan Khan Government Medical College, Nalhar, Mewat who had submitted a clarification that the area was less than the area recognized by the IPHS. The norms prescribed by the Director General of Health Services, Ministry of Health and Family Welfare, Government of India provided that for a general hospital, 80 to 85 sq. mts. per bed was the requirement to calculate the total plinth area which was desirable and for a teaching hospital, 100 to 110 sq. mts. For issuance of the NOC, the Trust was to abide by all the terms and conditions imposed by the Central Government/State Government, MCI and the affiliating university. The inspection could be done at any time and Government had a right to withdraw the E.C. and impose any condition. The factum of the pendency of the application of the Government for over an year was not denied and that an order had been passed by the Minorities Commission.

This Court, on 24.08.2015, noticed the said facts and directed that a short affidavit be filed as to while rejecting the application, any show cause notice was issued to the petitioners to put them to notice that whether there was any deficiency on account of the requirement of the IPHS and secondly under which statutory provision, the conditions of IPHS had to be fulfilled.

In pursuance of the said order, an additional affidavit has been filed by the Additional Chief Secretary to the Government of Haryana reiterating its earlier defence. Additionally, it has been submitted that the permission to open a medical college is to be granted by the Central Government on the recommendation of MCI and as prescribed under the notification dated 30.07.1999 (Annexure R-1/2), which were the

Regulations called the Establishment of Medical College Regulations, 1999. The same had been notified under Section 10-A read with Section 33 of the Indian Medical Council Act with the previous sanction of the Central Government. The Director General of Health Services, Ministry of Health and Family Welfare had issued the IPHS standards which pertained to the guidelines for district hospitals. Keeping in view the said guidelines, the competent authority had come to the conclusion that the built up area was not as per the said guidelines. If the petitioners had any grievance against the speaking order, they could represent to the Government. It was admitted that there is a requirement that the applicant had to own and manage a 300 bedded hospital and there was a need to inspect the hospital of the applicant for ascertaining whether the 300 bedded hospital was managed by the applicant and norms of IPHS may be followed as a guideline. The Inspection Committee had wrongly and arbitrarily submitted that the applicant owns and manages a 300 bedded hospital and the matter was being inquired into separately. The IPHS guidelines were to act as a main driver for continuous improvement in quality and serve as a benchmark for assessing the functional status of health facilities.

Counsel for the petitioners has accordingly argued that as per the MCI guidelines, the petitioners had applied and the minimum standards have been prescribed by the MCI. The qualifying criteria had been laid down in which prescribed ownership was of not less than 25 acres of land and the E.C. in Form No. 2 regarding no objection had to be obtained with the consent of the affiliation in Form No. 3 and the ownership was to be of hospital of not less than 300 beds with a necessary infrastructural facilities capable of being developed into a teaching institution in the campus of the

proposed medical college. The petitioners were fully eligible as per the said criteria and it was the MCI which was to examine the application thereafter and give its report to the Central Government as to whether the petitioners fulfilled the eligibility and the qualifying criteria for setting up the medical college. The Council had to recommend and the permission had to be granted by the Central Government and the State was wrongly applying the principles of IPHS which were applicable to the setting up of district hospitals and the State Government had no such jurisdiction at this stage. The application had been made in the requisite form with a proper recommendation. In the absence of any statutory norms, the IPHS guidelines could not be applied once the requirement was to be as per the parameters set down by the MCI.

State, on the other hand, submitted that the minimum standard requirements for the medical college were 2123 sq. mts. for the hospital and for the total constructed area, the requirement was 60242 sq. mts. The petitioner was only having 4500 sq. mts. and thus was deficient in having adequate clinical materia. The inspection report was wrong and the fresh inspection should be permitted.

The legal issues which arise for consideration are:-

- (i) That whether in spite of the direction issued by the National Commission for Minority Educational Institutions under the 2004 Act, the respondents were justified in withholding the E.C. for no valid reason.
- (ii) Whether the impugned order whereby the IPHS guidelines have been applied have any statutory backing.
- (iii) Whether in the peculiar facts and circumstances of the case,

the petitioner is entitled for the relief of mandamus for grant of the E.C.

It is not disputed that the petitioner submitted an application way back in August, 2014 on the strength of owning 59 acres of land out of which, it had earmarked 26.70 acres of a contiguous plot in which a 300 bedded hospital was already functioning and it was to be converted into a teaching hospital. The proposed hospital was to be affiliated to the Al-Falah University under the Haryana Private Universities Act, 2006 for which a separate proposal was being submitted and the intake of 150 annual admissions was proposed. Proceedings of the inspection conducted by the then DREM would show that the mutation had been done in favour of the petitioner and the non-incumbrance certificate had been issued by the Sub Registrar, Faridabad. The site plan of the college had been given to the Committee and two blocks which comprised of the present hospital connected to each other showed that hospital had 4500 sq. mts. of construction. There was a proposal to construct as much as 1,14,431 sq. mts. which included the hospital building, medical college etc. which reads as under:-

“The detail of existing and proposed building are as under:

A. Existing Hospital Building	: 4500 Sq. Mtr. (Constructed)
B. Hospital Building	: 28239 Sq. Mtr. (Proposed) as per MCI norms
C. Medical College	: 48824 Sq. Mtr. (Proposed) as per MCI norms
D. Girls & Nurses Hostel	: 7448 Sq. Mtr. (Proposed) as per MCI norms
E. Resident Doctors	: 4596 Sq. Mtr. (Proposed) as per MCI norms
F. Boys Hostel	: 4456 Sq. Mtr. (Proposed) as per MCI norms

G. Common Facilities	: 1406 Sq. Mtr. (Proposed) as per MCI norms
H. Teaching Staff Quarters	: 2688 Sq. Mtr. (Proposed) as per MCI norms
I. Non-Teaching Quarters	: 12276 Sq. Mtr. (Proposed) as per MCI norms

TOTAL : 114431 Sq. Mtr.

The infrastructure had the OPDs, reception area and the OPD rooms for clinical specialities like medicine surgery paediatrics, orthopaedics, eye, ENT, Gynae & Dentistry etc. The intensive area had 50 beds and there was one major operation theater and one minor operation theater, one labour room and CSSD station with autoclave facilities. At the time of inspection, 28 doctors were present out of the faculty of 33 and the list was attached. The nurses numbering 36 were present on the rolls and 25 were present at the time of inspection, 11 being on night duty. Similarly, para medical staff to the tune of 15 in number were present out of the 18 on rolls. The OPD strength on the day of inspection was 560 and bed occupancy was 61% on the day of inspection. There was no medical college within a radius of 44 kilometers and the Badshah Khan Government Hospital was at a distance of 22 kilometers. The proposed medical hospital would meet the requirement of 10 lacs population and satisfaction was recorded that the machinery and equipment was sufficient to run a 300 bedded hospital, which was having independent electricity supply of 310 K.V. and generator back up each of 350 KVA, 180 KVA and 65 KVA. The trust was running education facilities since 1997 which had been converted into the State Private University and had approximately 5000 students registered for various courses. The audited balance sheets showed the following status:-

“The audited balance sheets of the trust for last three years

is as follows:

- | | | | |
|---|--|---|------------------|
| 1 | Revenue Accruals for year 2013-14 | - | Rs. 31.60 Crores |
| 2 | Revenue Accruals for year 2012-13 | - | Rs. 28.37 Crores |
| 3 | Revenue Accruals for year 2010-11 | - | Rs. 19.10 Crores |
| 4 | The Trust is running Al-Falah University which has assest value of about | - | Rs. 43.70 Crores |
| 5 | Cost of 26.71 Acres Land | - | Rs. 20 Crores |
| 6 | The Trust has already constructed about 4500 Sq. Mtr. area costing about | - | Rs. 10 Crores |

The Trust has corpus Fund of Rs. 42 Crores and 13.51 Crores FDR's and the balance sheet show that there are no outside liablities. Copies of Audited Balance Sheets of last three years & copies of FDR's received.”

Eventually, the conclusion by the Committee was as under:-

“Conclusion:

The observations of the Inspection Committee:

1. *The applicant owns and is managing a 300 bedded hospital which was made functional on 1st June 2014. The hospital is having adequate clinical material on the day of inspection.*
2. *The Al-Falah University, where the medical college and hospital is proposed, has 62 acres of land as per revenue record available. The trust has earmarked 26.70 acres of land for the proposed medical college and hospital. This piece of land is unitary and its size fulfills the requirement of MCI.*
3. *The trust has financial capabilities to build and manage the existing and proposed hospital and medical college.”*

On the strength of the said positive recommendations by the High Powered Committee, the case had been processed. For reasons best known to the State, final sanction was not granted. At no stage at that point

of time, there was any objection regarding the fact that the Committee had given a wrong report. The petitioners were forced to approach the National Commission wherein also, the State had never opposed the factum on merits as to the fact that the 300 bedded hospital did not exist at site. Rather, perusal of the letter dated 25.05.2015 of respondent no. 2 to respondent no. 1 which was part of the reply before the Commission would go on to show that there was a requirement of such hospitals in the area and there was no such separate policy than the one notified by the MCI. The relevant portion of the letter reads as under:-

“In addition to the above, it also needs to be under-scored that the Mewat-Palwal and Faridabad area is perhaps the worst in terms of health parameters not only in the State but perhaps in the whole of Northern India where the University under reference has been proposed to be established.

With reference to the Government letter dated 19.05.2015, it may be stated that there is no proposal of framing or formulating of any “new” policy on the subject of opening of medical colleges/universities as there is at present no separate policy other than the one already notified by the Medical Council of India.

In view of the above, for Government may like to urgently consider issuing the requisite Essentiality Certificate to the applicant University in view of the recommendation made by the high level inspection committee referred to above, and also in the face of the applicant approaching the statutory body established by the Government of India.”

The defence of the State before the Commission was only that the case is under consideration and the decision will be conveyed.

Accordingly, a finding was recorded that the right of the minority institution was being hampered under Article 30(1) of the Constitution of India to establish and administer educational institution of its choice. A direction was accordingly issued to take necessary action on the basis of the expert committee report and issue NOC vide order dated 27.05.2015. The said order reads thus:-

“Respondent No. 2 admits that the inspection report of experts in the matter has already been sent on 22.9.2014 to the Principal Secretary, Government of Haryana, Medical Education and Research Department for necessary action. A reminder dated 28.5.2013 from the respondent No. 2 in this regard was again sent to the same authority.

The above facts clearly establish that expert report is pending with the Principal Secretary to the Government of Haryana, Medical Education and Research Department since 22.9.2014. Even respondent No. 1 does not deny this fact. Yet no action has been taken in this regard till date.

The unnecessary and unexplained delay on the part of the Secretary, Medical Education and Research Department, Government of Haryana, to take any action on the basis of expert committee report clearly hampers the right of a minority guaranteed under Article 30 (1) of the Constitution of India to establish and administer education institutions of its choice. The right of a minority to establish an education institution cannot be kept under suspension.

Taking view of the above facts the Commission directs the Principal Secretary to Government of Haryana, Medical Education and Research Department, to immediately take necessary action on

the basis of expert committee report and issue NOC/Essentiality Certificate to the petitioner for the establishment of Al-Falah School of Medical Science & Research Centre at Village Dhauj, Fatehpur, Taga Road, Faridabad, Haryana within four weeks from the service of this order.

The petition is disposed of accordingly.”

The said order was never put to challenge by the State under Section 12F before the High Courts or the Apex Court under the 2004 Act. A statutory body had thus directed the State to issue the necessary certificate. However, the State chose again to sleep over the rights of the petitioner and thereafter had passed the impugned order rejecting the case on a different ground altogether, which is the subject matter of ground (ii).

In such circumstances, it is held that without any tenable reason, the directions issued by the Commission were flouted with impunity and should have been complied with at the first instance.

(ii) Whether the impugned order whereby the IPHS guidelines have been applied have any statutory backing.

It is not disputed that for an establishment of a medical college under Section 10A of the Indian Medical Council Act, 1956, the previous permission of the Central Government is to be obtained. The applicant, for obtaining permission, is to submit to the Central Government a scheme in accordance with the provisions of Clause 10A(2)(b) in such form and such particulars and accompanied with such fee. It is the case of the State Government itself that the 1999 Regulations notified by the MCI would be governing the setting up of the establishment of the medical college. Regulation 3 provides the scheme which are annexed with the regulations.

The said regulation reads thus:-

*“3. The establishment of a medical college –
No person shall establish a medical college except after
obtaining prior permission from the Central
Government by submitting a Scheme annexed with these
regulations.”*

Under the scheme, the qualifying criteria, the minimum requirement was of not less than 25 acres owned and possessed by the person under Regulation 2(2) and under sub-clause (3) to (5) of Regulation 2, the following requirements were necessary:-

*“(3) that Essentiality Certificate in Form 2
regarding No objection of the State Government/Union
Territory Administration for the establishment of the
proposed medical college at the proposed site and
availability of adequate clinical material as per the
council regulations, have been obtained by the person
from the concerned State Government/ Union Territory
Administration.*

*(4) that Consent of affiliation in Form-3 for the
proposed medical college has been obtained by the
applicant from a University.*

*(5) That the person owns and manages a
hospital of not less than 300 beds with necessary
infrastructural facilities capable of being developed into
teaching institution in the campus of the proposed
medical college.”*

On the strength of the above, the E.C. in Form II was to be submitted by getting a no objection from the State Government. The requisite Form 2 reads as under:-

“FORM – 2

Subject:- ESSENTIALITY CERTIFICATE

No.

*Government of Haryana
Department of Health*

Dated, the08/2014

To

(Applicant),

Sir,

The desired certificate is as follows:-

- (1) No. of institutions already existing in the State.*
- (2) No. of seats available or No. of doctors being produced annually.*
- (3) No. of doctors registered with the State Medical Council.*
- (4) No. of doctors in Government service.*
- (5) No. of Government posts vacant and those in rural/difficult areas.*
- (6) No. of doctors registered with Employment Exchange.*
- (7) Doctor population ratio in the State.*
- (8) How the establishment of the College would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.*
- (9) The restrictions imposed by the State Government, if any, on students who are domiciled in the State from obtaining admissions in the State, be specified.*
- (10) Full justification for opening of the proposed College.*
- (11) Doctor-patient ratio proposed to be achieved.*

The (Name of the person) _____ has applied for establishment of a Medical College at _____. On careful consideration of the proposal, the Government of _____ has decided to issue an Essentiality Certificate to the

applicant for the establishment of Medical College with _____ (No.) seats.

It is certified that:-

- (a) The applicant owns and manages a 300 bedded Hospital which was established in _____*
- (b) It is desirable to establish a Medical College in the public interest;*
- (c) Establishment of a Medical College at _____ by (the name of Society/Trust) is feasible.*
- (d) Adequate clinical material as per the Medical Council of India norms is available.*

It is further certified that in case the applicant fails to create infrastructure for the Medical College as per the MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the Students already admitted in the College with the Permission of the Central Government.

Yours faithfully,

(SIGNATURE OF THE COMPETENT AUTHORITY)”

A perusal of the above Form 2 would go on to show that the adequate clinical material as per clause (d) of the MCI norms is to be available. The report of the Inspection Committee has already been discussed in detail above under issue no. (i). the factum of having the clinical material and the ownership of the 300 bedded hospital stands established. The desirability and feasibility to establish a medical college in the area has also been noticed in the letter of respondent no. 2 dated 25.05.2015 which has been reproduced above. The petitioner is a deemed university itself under the Haryana Private Universities Act, 2006 and thus would have the consent for affiliation, as pleaded. On the strength of the above eligibility and available qualifying criteria, the petitioners had applied

to the Union of India. As per Regulation 7, a report is to be called from the Medical Council and the grant of permission is to be granted under Regulation 8 on the recommendations of the Council and a letter of intent may be issued. The relevant regulations read thus:-

“7. REPORT OF THE MEDICAL COUNCIL OF INDIA:

- (a) *After examining the application and after conducting necessary physical inspections, the Medical Council shall send to the Central Government a factual report stating -*
- (1) *that the applicant fulfils the eligibility and qualifying criteria.*
 - (2) *that the person has a feasible and time bound programme to set up the proposed medical college alongwith required infrastructural facilities including adequate hostels facilities separate for boys and girls, and as prescribed by the Council, commensurate with the proposed intake of students, so as to complete the medical college within a period of four years from the date of grant of permission;*
 - (3) *that the person has a feasible and time bound expansion programme to provide additional beds and infrastructural facilities, as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both and further that the existing hospital as adequate clinical material for starting 1st year course.*
 - (4) *that the person has the necessary managerial and financial capabilities to establish and maintain the proposed medical college and its ancillary facilities including a teaching hospital.*
 - (5) *that the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.*
 - (6) *that the applicant has appointed staff for the 1st year as per MCI norms.*

- (7) that the applicant has not admitted any students.*
- (8) Deficiencies, if any, in the infrastructural or faculty shall be pointed out indicating whether these are remediable or not.*
- (b) The recommendation of the Council whether Letter of Intent should be issued and if so, the number of seats per academic year should also be recommended. The Council shall recommend a time bound programme for the establishment of the medical college and expansion of the hospital facilities. This recommendation will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The recommendation will also define annual targets to be achieved by the person to commensurate with the intake of students during the following years.*
- (c) Where the Council recommends for not issuing Letter of Intent, it shall furnish to the Central Government -*
 - (i) its reasons for not granting the Central Government permission; and (ii) documents/facts on the basis of which the Council recommends the disapproval of the scheme.*
- (d) The recommendation of the Council shall be in Form-4.*

8. GRANT OF PERMISSION:

- (1) The Central Government on the recommendation of the Council may issue a Letter of Intent to set up a new medical college with such conditions or modifications in the original proposal as may be considered necessary. This letter of Intent will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The formal permission may be granted after the above conditions and modifications are accepted and the performance bank guarantees for the required sums are furnished by the person and after consulting the Medical Council of India.*

(2) The formal permission may include a time bound programme for the establishment of the medical college and expansion of the hospital facilities. The permission may also define annual targets as may be fixed by the Council to be achieved by the person to commensurate with the intake of students during the following years.”

A perusal of the above would further go on to show that the applicant can complete the medical college within a period of 4 years from the date of grant of permission. The infrastructure can be upgraded and the existing hospital has to have adequate clinical material for starting the first year course.

As noticed above, the Committee has already given in detail as to the proposed construction the applicant is to make on the 26.70 acres campus. The objection of the State at this instance is that the 4500 sq. mts. is less on the strength of the IPHS guidelines is without any basis. The introduction of the IPHS guidelines at the last stage without even putting the petitioners to notice as to whether the same were to be complied with is also violative of the principles of natural justice. Even otherwise, nothing could be pointed out as under which of the statutory regulations/guidelines the norms of IPHS had to be applied. Since it is the case of the State itself that the 1999 regulations notified by the MCI would be the governing provisions. If the said guidelines are kept in mind for opening of district hospitals that would not give a valid ground for the State to incorporate the said guidelines for the purpose of giving the E.C. which has to be governed under the provisions of the 1999 Regulations. The Form 2 clause also further provides that in case the necessary infrastructure is not provided by the said institute as per the MCI norms and further fresh admissions were

stopped, the State Government has to take all the responsibility of the students already admitted in the college with the permission of the Central Government. These factors only go on to show that the setting up of the medical college is to be taken up in steps and there cannot be an overnight availability of infrastructure which would also be further clear from the Regulations 7(2) and (3) whereby, the feasibility of a time bound programme has to be kept into mind by the MCI which is to be completed within a period of 4 years from the date of grant of permission and there can be upgradation of the existing hospital. It is not for the State at this stage to see whether the guidelines of MCI have been fulfilled under Regulation 7 and the cart is being put before the horse by the State. The role of the State being minimal has been recognized by the Apex Court in ***Thirimuruga Kirupananda Variyarthavathiru Sundara Swanigalme vs. State of Tamil Nadu and others, 1996 (3) SCC 15***. In the said case, the State Government had rejected the issuance of the E.C. on the ground that no private trust or management could start a medical/dental college. It was held that the State Government was only required to consider the qualifying criteria prescribed under the scheme and the E.C. cannot be withheld on any policy consideration and the matter of establishment rests with the Central Government. The relevant paragraphs read thus:-

“34. It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government. The said condition about obtaining an

essentiality certificate from the State Government regarding desirability a feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act, for the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.

35. As indicated earlier, the Trust did approach the State of Tamil Nadu for grant of essentiality certificate in terms of Letter of Intent dated December 12, 1995 issued by the Government of India, but the State Government has refused to issue the said certificate by its order dated January 10, 1996. The only reason which has been given by the State Government for such refusal is that "the Government have not changed the policy of not permitting any private Trust or Management to start a Medical/Dental College". This would show that instead of considering the matter of grant of essentiality certificate on the basis of desirability and feasibility of having the proposed medical college at the proposed location, the State Government has refused to grant the essentiality certificate on the basis of its earlier policy of not permitting any private Trust or Management to start a Medical/Dental College in the State. The State

Government could not refuse essentiality certificate on such a policy consideration. The refusal on the part of the State Government to grant the essentiality certificate in respect of the medical college proposed to be established by the Trust cannot, therefore, be upheld.

36. *The question that arises is whether the State Government should again be directed to consider the matter of grant of essentiality certificate. On a careful consideration of the matter, we are of the opinion that since the Trust has already established the infrastructure for establishing a medical college and the reports of the inspection conducted by the Medical Council as well as by the University indicate that the facilities that are available are adequate for starting a medical college, it would serve no useful purpose to insist upon obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location. We are therefore, of the view that the matter of grant of permission for establishing a new medical college by the Trust should be considered by the Central Government without insisting upon the condition regarding obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location.”*

A similar view was taken by the Division Bench of the Madras High Court in ***State Government of Tamil Nadu vs. Meenakshi Amman Trust, 2004 (3) SCT 649*** while placing reliance upon the judgment of the Apex Court discussed above. In the said case, on account of the refusal of the E.C., the writ petition had been filed and the Division Bench noticed the inspection reports which were in place and it was noticed that the number of

actual patients required at the time of inspection is not the requirement but the provision of not less than 300 beds with necessary infrastructural facilities. The object and intendment of satisfying the requirements of whether the hospital had the said facilities of receiving and treating patients to the extent of 300 beds was the criteria and in view of the affirmative reports, the direction of the Single Judge directing issuance of the E.C. was upheld. The relevant portion reads thus:-

“5. In the matter relating to the grant of permission to set up new medical colleges, the role of the State Government vis-a-vis that of the Central Government and the Medical Council of India was the subject matter of adjudication in Thirumuruga Kirupananda Variyar Thava Thiru Sundara Swamigal Medical Education and Charitable Trust v. The State of Tamil Nadu and others, 1996(3) S.C.C. 15. In the said case, the State Government took a stand that in view of the Proviso to sub-section (5) of Section 5 of the Medical Universities Act, inserted by the State Act, no college can be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, for such permission have been complied with. This claim was tested on the touchstone of Section 10-A, which has been incorporated in the Indian Medical Council Act, 1956, by a later amendment. Interpreting the provisions relevant on the subject in the context of the legislative power conferred by Entry 25 of List III of Schedule VII of the Constitution, it was held by the Supreme Court that the State Government have got no say in the matter of establishing a new medical college excepting verifying the qualifying criteria for issuance of Essentiality Certificate regarding desirability and

feasibility of having the proposed college at the proposed location. It is emphatically held by the Supreme Court that such requirement of obtaining an Essentiality Certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location, cannot be equated with obtaining prior permission of the State Government for establishing a new Medical College as required under Proviso to Section 5(5) of the Medical Universities Act. It was also held in no uncertain terms that the Essentiality Certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone. But that is not the only judgment on the point. In State of Maharashtra v. Indian Medical Association and others, 2002(1) SCT 1 (SC) : 2002(1) SCC 589, which is a latest adjudication on the point, the Supreme Court held that the criteria for issuance of the Essentiality Certificate by the State is the desirability of location of the proposed Medical College as also the provision for adequate clinical materials as per the guidelines prescribed by the Medical Council of India, at the proposed Medical College. That is the law of the land in operation.”

In ***Government of Andhra Pradesh and another vs. Medwin Educational Society and others, 2004 (1) SCC 86***, the above said view was reiterated. In the said case, the issue arose as to what was the jurisdiction of the State Government regarding the issuance of the E.C. It was held that the power of the Central Government to the extent of where the medical college is to be set up has been delegated to the State, which has a positive role to play on that account since the desirability and feasibility of having a

medical college at the proposed location had to be kept in mind. It was further held that while deciding the said issue, the State could not act arbitrarily or capaciously and the decision should be on informed reasons and based on relevant factors pertaining to the local needs and public interest. The relevant portion reads thus:-

“46. The upshot of the aforementioned discussions is that, in our opinion, the High Court has committed a manifest error in holding that the State has no role to play in the matter of identification of location of the sites where the medical colleges are proposed to be established. While granting an essentiality certificate particularly having regard to the local needs, the State, in our considered view, has a positive role to play but the same would not mean that the State Government's say is final as ultimately final recommendations have to be made by the Medical Council of India and the Dental Council of India, as the case may be, whereafter the final decision has to be taken by the Central Government.”

In the present case, the factum of the feasibility regarding the location of the upcoming medical hospital is itself admitted by respondent no. 2 in its letter dated 25.05.2015. It has been noticed that the health parameters in Mewat, Palwal and Faridabad are the worst not only in the State but perhaps in whole of the northern India. The petitioner has placed sufficient material on record to show in the form of notings that a positive case had been built up by the department as such, that the area where the hospital was coming up was in a backward location and would only further ameliorate the pain of the masses and put a soothing balm upon 10 lac people keeping in view the fact that the closest medical hospital was 22

kilometers away and there was no medical college within the radius of 44 kilometers.

In such circumstances, in view of the settled position of law, this Court is of the opinion that the impugned order whereby, the IPHS norms were being applied are without any statutory basis and cannot be held to be justified.

(iii) Whether in the peculiar facts and circumstances of the case, the petitioner is entitled for the relief of mandamus for grant of the E.C.

The last question which arises is whether a mandate should be issued for issuance of a certificate is necessarily to be answered in favour of the petitioner. The facts have shown that the State is consistently stone walling the application for the issuance of the E.C. Petitioner has been running from pillar to post since the last one year for getting a formal certificate and in spite of being armed with a positive report of the Inspection Committee, the defence now taken is that there was a mala fide intention on the part of the Inspection Committee in the additional affidavit.

The said defence is but to be rejected. It is the settled position that by filing a written statement and additional affidavit, a new ground cannot be urged which was not part of the impugned order. The ground now taken that the Committee had given a wrong report was never the stance of the Government at any earlier point of time specially before the National Commission and is thus, only an after thought. Reliance can be placed upon the observations of the Apex Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others***,

1978 (1) SCC 405. The relevant observations read thus:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

In such circumstances, keeping in view the fact that the petitioners valuable rights of admission are involved and it has already lost out one academic year and even if the application is to be processed, admission is going to be for the year 2016-17 and would set back the petitioner by another two years in case the State Government is given an option to reconsider.

In such circumstances, the order dated 07.07.2015 (Annexure P-26) is quashed and a writ of mandamus is issued directing respondent no.

1 to issue the E.C./NOC within a period of 2 weeks from the date of receipt of certified copy of the order.

Accordingly, the present writ petition is allowed with the above said observations.

15.09.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

