

CWP No.21243 of 2015

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

**CWP No.21243 of 2015 (O&M)
Date of decision:04.07.2016**

Adesh Welfare Society (Regd.)

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. J.S.Gill, Advocate, for the petitioner.

Mr. Keshav Gupta, AAG, Haryana,
for respondents No.1 and 2.

Mr. Puneet Gupta, Advocate,
for respondent No.3.

Mr. Ramesh Hooda, Advocate,
for respondent No.4.

Rakesh Kumar Jain, J.

The petitioner is a society, registered under the Society Registration Act, 1890 in the year 1993. It applied to the Government of Haryana for issuance of a Letter of Intent to establish Adesh Haryana University and to start MBBS programme with annual intake of 150 seats at village Mohri, Tehsil Shahabad, District Kurukshetra. The Government of Haryana, Department of Higher Education, vide memo No.20/34-2012 UNP(5) dated 04.03.2014, issued Letter of Intent to the petitioner-society with certain conditions, for establishment of Adesh Haryana University, Mohri, NH-1, Kurukshetra, Haryana under the Haryana Private Universities

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Act, 2006 and granted Letter of Intent, vide memo No.21/79/2013-2HB-IV dated 04.03.2014, to start MBBS programme with 150 annual intake at Adesh Medical College and Hospital at village Mohri, Tehsil Shahabad, Distt. Kurukshetra, Haryana, as proposed by the petitioner, subject to certain terms and conditions, in which one of the condition was to obtain Essentiality Certificate/NOC by the State Government, which was to be issued after satisfactory report of the Inspection Committee and as per the provisions of the Medical Council of India Regulations, 1999. The petitioner applied on 07.08.2014 for grant of change of land use to the Directorate of Town and Country Planning, Haryana, for setting up of the University over an area measuring 117095.51 sq. meters, which was granted vide Memo No.KA-562-JE(BR)-2014/17822 dated 11.08.2014 after receipt of ₹23,41,911/- on account of conversion charges. The petitioner had also applied for approval of building plans in order to erect the buildings on the site area measuring 117095.51 sq. meters, which was granted by the Directorate of Town and Country Planning, Haryana, vide Memo No.KA-562-JD(RM)2014/26282 dated 14.11.2014. The petitioner established a 300 bedded teaching hospital under the name and style of Adesh Medical College and Hospital at NH-1, Village Mohri, Tehsil Sahabad-M, District Kurukshetra, Haryana and applied on 11.08.2015 to the Additional Chief Secretary, Department of Medical Education, Government of Haryana for issuance of Essentiality Certificate on the prescribed Form-2 as it was a pre-requisite to apply for permission from the Medical Council of India for grant of letter of permission to start the proposed medical college.

Since no action was taken by the respondents on the application

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dated 11.08.2015 till 01.10.2015, therefore, the petitioner filed the present writ petition in which notice of motion was issued on 05.10.2015 and at that time, it was noticed that the inspection has been conducted on 03.10.2015 by respondents No.1 and 2. On 28.10.2015, the Court recorded the following order:-

“Learned counsel for the State prays for more time to file an affidavit on the ground that the inspection team had visited the petitioner-institute on 3.10.2015 and the inspection report has been submitted to the Government of Haryana along with its comments. The matter for consideration of inspection report for issuance/denial of Essentiality Certificate/No Objection Certificate is, thus, pending at Government level. On that account more time is prayed for as per letter dated 26.10.2015 addressed by the Director, Medical Education & Research, Haryana.

Learned counsel for the petitioner has stressed upon the time schedule (Anneuxre P7) fixed for receipt of the applications for establishment of new medical college and processing of the applications by the Central Government and the Medical Council of India. It is submitted that on 28.9.2015, the Union of India had forwarded the case of the petitioner to the Medical Council of India for examining and assessing the applications/proposals as per Section 10(A) of the Indian Medical Council Act, 1956 and the Regulations. It is pointed out that the recommendation of the Medical Council of India to the Central Government for issuance of letter of intent has to be done by 15.12.2015 after inspection by MCI. This is to be done on the basis of the essentiality certificate which is to be issued by the State Government, which is the subject matter of the present petition.

In such circumstances, keeping in view the urgency and the prejudice which can be caused to the petitioner-institute, on account of delay it is expected that the State Government will take a decision either way by the next date i.e. 6.11.2015.

Adjourned to 6.11.2015.”

In the aforesaid order, it was noticed that the inspection report

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dated 03.10.2015 was submitted to the Government of Haryana along with comments of the Inspection Team but the matter was still pending consideration. Keeping in view the urgency involved, as stated in the order, the Court expected that the State Government shall take a decision, one way or the other, by the next date of hearing i.e. 06.11.2015. On 06.11.2015, the Court recorded the following order:-

“Affidavit of Shri S.K.Setia, Special Secretary to Government of Haryana, has been filed. The relevant averments made in the affidavit read as under:

“2. That the inspection of the institution was conducted and the inspection report dated 3.10.2015 is attached herewith as Annexure A-1. The deficiencies were observed while conducting the inspection and they were specifically pointed out on asking of the Additional Chief Secretary via note dated 9-10-2015 which is attached herewith as Annexure A-2. It was observed that most of the patients were called for the purpose of the inspection alone and these patients were otherwise not patients of the hospital. The same matter was also regularly shown in the media and an enquiry has been recommended regarding this incident by the Health Minister. The complete file is still pending with the Government.

3. That another factor relevant for the current case is that a threat to State security was pointed out by the A.D.G.P. (C.I.D.), Panchkula, Haryana. Based upon the same further comments have been sought from the ADGP vide letter dated 29-10-2015, attached herewith as Annexure A-3, and also from other intelligence agencies.

4. That due to these cogent reasons, the file is still under process. This reply is only to place before this Hon'ble Court that due action has been taken by the Government upon the case at hand, especially in view of the interim orders passed by this Hon'ble Court.”

This Court had already noticed the issue which is pending consideration before this Court in its order dated 28.10.2015 and

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keeping in view the urgency of the issue, it was expected that the Government would take a decision, either way, by the next date of hearing, i.e., today. However, the affidavit filed does not comply with the order and the matter has still been kept pending in spite of the fact that the detailed observations were made in the order dated 28.10.2015.

In such circumstances, last opportunity is granted to respondent No.1 to comply with order dated 28.10.2015, failing which, he shall be present in Court on 20.11.2015 to explain the circumstances for the indecisiveness of the State.”

Last opportunity was granted to comply with the previous order dated 28.10.2015 and a direction was issued that in case of non-compliance of the order, the concerned officer shall remain present in the Court. On the next date of hearing, i.e. 20.11.2015, Shri K.K.Khandelwal, Additional Chief Secretary, Department of Medical Education and Research, Haryana, appeared before the Court and the Court passed the following order in his presence on 20.11.2015:-

“Mr. K. K. Khandelwal, Additional Chief Secretary, Department of Medical Education and Research, Haryana, Chandigarh is present in person in pursuance of order dated 6.11.2015.

The official record which has been produced by him has been perused. It is apparent that recommendation had already been made on account of most of the deficiencies having been removed by the petitioner institute. Recommendation has also been made by the DMER that approval/conditional NOC be issued on 15.11.2015. The Officer present has also similarly recommended on 16.11.2015 for issuing of essentiality certificate/NOC on the basis of note made. It is, however, apparent that the Health Minister on 18.11.2015 has observed that essentiality certificate may be denied in the absence of any clear cut clarification from the reporting agency. Thus, it is apparent that the Health Minister is doubting the capacity and background of the Chairman of the petitioner society in view of the certain reports from the

Intelligence Bureau that the said person is a threat to the society on account of being involved in criminal cases.

However, it is not disputed that the petitioner here is only seeking a direction for consideration and in such circumstances, it is bounden duty of the respondents to come to a categorical decision which could at least be tested on the ground of arbitrariness and justifiable reasons. In the absence of the same the logjam continues.

Counsel for the petitioner also pointed out from the additional affidavit filed that the FIRs in question pertained to a period of more than 30 years ago and in two cases there had been a discharge order and acquittal and withdrawal of prosecution in other two cases.

Counsel for the petitioner has also pointed out the list of institutions which the petitioner society is already running in the State of Punjab, which is reproduced below:-

- “1. Adesh Charitable Cancer Hospital, Sri Mukatsar Sahib, College of Nursing.
2. Adesh Institute of Medical Science, Sri Mukatsar Sahib.
3. Adesh Institute of Physiotherapy, Adesh Institute of Medical.
4. College of para-medical Science, Adesh Institute of Medical.
5. Adesh Institute of Technology, Gharuan, Adesh Institute of Information Technology and Management.”

In such circumstances, it is apparent that the ground which is weighing with the Minister seems to be prima-facie without any basis. It is settled principle that a person can only be held guilty having a doubtful background on account of conviction having been recorded by the Court of competent jurisdiction. Merely because certain criminal proceedings were launched at that point of time would not be a ground to deny the permission for setting up an Educational Institution like a Medical College which would only benefit the State and provide education and Doctors to the society. It is not further disputed that the said institution is to be established by a society and it not that only one individual would

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be running the show who would be solely responsible for the acts of the society. These are the facts which have to be kept into consideration while taking the decision on the matter.

Counsel for the State submits that the decision would be taken by the competent authority within a period of two weeks from today.

Adjourned to 3.12.2015.

In case, the decision is not taken either way by the next date, Mr. K. K. Khandelwal, Additional Chief Secretary, Department of Medical Education and Research, Haryana, Chandigarh shall be present in person in Court.”

On 03.12.2015, the Court had noticed that the matter was still pending for consideration with the Government and the case was thus adjourned to 09.12.2015. On the said date, the following order was passed:-

“Counsel for the State, on instructions from the Additional Chief Secretary, who is also present in the Court, has brought to the notice of this Court that the Health Minister has declined the issuance Essentiality Certificate to start a proposed medical college, which the petitioner is praying for.

A perusal of the file would also go on to show that the formal order to that effect is yet to be communicated to the petitioner and neither any such order has been produced.

A perusal of the notings and photocopies, which have been produced before this Court by the State counsel would also go on to show that the matter was referred to the office of the Advocate General. The Additional Advocate General and Advocate General came to the opinion that the Essentiality Certificate cannot be denied to the petitioner-society on the grounds noticed by the Health Minister.

The matter was, thereafter, put up before the Chief Minister, who approved the proposal of the Additional Chief Secretary (Medical Education and Research), wherein the opinion was that the issue of the Essentiality Certificate be considered. It seems, thereafter, the file was again put up before the Health Minister, who vide order dated 08.12.2015, in view of the latest CID Report has come to the opinion that the Essentiality

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Certificate is to be denied to the petitioner as the security of the State cannot be compromised at any cost.

Counsel for the State states that the Advocate General would be assisting the Court on the next date of hearing.

To come up for consideration on 15.12.2015.

The Additional Chief Secretary need not be present on the next date of hearing.

Needless to say that the record shall be made available on the date fixed.”

Since the Essentiality Certificate was declined in terms of the order dated 11.12.2015, the petitioner made a prayer on 15.12.2015 to amend the writ petition and filed CM No.16540 of 2015 under Order 6 Rule 17 of the CPC in order to challenge the order dated 11.12.2015 by which the application for grant of Essentiality Certificate was rejected. The said application was allowed and in the amended writ petition, again notice was issued, in which the respondents No.1 and 2 took time to file reply, whereas respondent No.4 chose not to file reply and to rely upon the reply filed to the un-amended writ petition. Thereafter, reply was filed by respondents No.1 and 2 on 01.04.2016 and the petitioner filed replication to this reply by way of CM No.5133 of 2016, which is taken on record.

In the amended writ petition, the prayer has, thus, been made to issue a writ in the nature of *certiorari* for quashing the order dated 11.12.2015, attached as Annexure P-11, whereby the Essentiality Certificate to set up a medical college has been denied and a writ in the nature of *mandamus*, seeking a direction to respondent No.4 i.e. Pt. B.D. Sharma University of Health Sciences for grant of affiliation to the petitioner for the session 2016-2017 and a further direction to respondent No.3 to accept and forward the document of Essentiality Certificate in support of the

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application for setting up the medical college.

Counsel for the petitioner has submitted that in the inspection report dated 03.10.2015, besides the legal objections of registration of the society and environment clearance, objection has been raised about the fire clearance, blood bank and lift, about which a detailed reply has been given by the petitioner on 14.11.2015, but the petitioner is aggrieved against the decision of the Government much-less the reason given in the impugned order about the antecedents of the Chairperson of the Society, namely, Dr. H.S.Gill, against whom it is alleged that he had been involved in some criminal cases in the State of Punjab and had connection with the alleged terrorists and as per the report of the ADGP, CID, Haryana, permission is declined because it would be risky for the State to compromise with the safety and security of the people.

Counsel for the petitioner has submitted that the security of the State is not one of the reason on the basis of which Essentiality Certificate can be declined but in any case, it is submitted that Dr. H.S.Gill was involved in total four cases, out of which he has been acquitted in one case, discharged in two cases and the 4th case was withdrawn by the State. The detail of those cases are also given by the petitioner in the writ petition, which is also reproduced as under:-

Sr. No.	FIR No.	Date	U/s	PS	Remarks
1	153	01/06/84	302/324/34 IPC	PS City, S.M.S.	Acquitted vide order dated 06.06.1985

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Sr. No.	FIR No.	Date	U/s	PS	City	Remarks
2	162	07/06/84	307/149/148/435/148/149/332/353/186 IPC, 4/5 Explosive Act	PS S.M.S.	City	Prosecution was withdrawn by State Government
3	236	28.08.1984	9/10/11/12/13/14 Unlawful Activity Act, 1967	PS S.M.S.	City	Discharged vide order dated 24.08.1985
4	211	15.08.1983	302/307/120-B IPC	PS S.M.S.	City	Discharged vide order dated 14.02.1984 passed by SDJM, Muktsar

It is further submitted that even Dr. H.S.Gill has already resigned from the primary membership as well as from the Chairmanship of the Society. He had submitted his resignation on 10.12.2015, which has been accepted by the General Body of the Society on 12.12.2015 and further intimation has also been given to the Registrar vide letter dated 14.12.2015. It is further submitted that the society, even under the chairmanship of Dr. H.S.Gill, had been running various institutions in the State of Punjab without any complaint of the kind on the basis of which the Essentiality Certificate has been declined and the details of the institutions is also given in the writ petition, which is also reproduced as under:-

- I. Adesh Charitable Cancer Hospital, Sri Muktsar Sahib, College of Nursing.
- II Adesh Institute of Medical Science, Sri Muktsar Sahib.
- III. Adesh Institute of Physiotherapy, Adesh Institute of Medical.
- IV. College of para-medical science, Adesh Institute of Medical.

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- V. Adesh Institute of technology, Gharuan, Adesh Institute of Information Technology and Management.”
- “(i) Adesh University Bathinda.
- (ii) Adesh Institute of Medical Sciences and Research, Bathinda.
- (iii) Adesh Institute of Dental Sciences and Research, Bathinda.
- (iv) Adesh College of Nursing, Bathinda.
- (v) Adesh College of Physiotherapy, Bathinda.
- (vi) Adesh Polytechnic College of Pharmacy and Technology, Bathinda.
- (vii) Adesh Institute of engineering and Technology, Faridkot.
- (viii) Bhai Maha Singh College of Engineering, Sri Muktsar Sahib.
- (ix) Adesh Polytechnic College, Shri Muktsar Sahib.
- (x) Malwa Polytechnic College, Faridkot.
- (xi) Bhai Maha Singh Institute of Life Sciences and IT, Sri Muktsar Sahib.
- (xii) Adesh Institute of Higher Studies, Faridkot.”

It is further submitted that the clearance has been given by the Additional Chief Secretary for the issuance of Essentiality Certificate for which the Chief Minister had even sought comments of the Advocate General, Haryana, which were given by the Additional Advocate General, Haryana on behalf of the Advocate General, Haryana, opining that the Essentiality Certificate cannot be declined on the basis of antecedents of Dr. H.S.Gill. However, the Health Minister, Haryana did not accept the recommendation and again the matter was put up before the Chief Minister who again asked for the comments of the Advocate General in this regard. This time, the Advocate General himself gave the opinion, which has been approved by the Chief Minister. It is, thus, submitted that as per the Rules of Business of the Government of Haryana, 1977 (as amended upto 13th October, 2006), which has the force of law, issued by the Governor of

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Haryana in exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India, in case of conflict of opinion between the Minister-in-charge and the Administrative Secretary and also in case where the matter pertains to the cases which affect or are likely to affect the peace and tranquility of the State, such type of cases are placed before the Chief Minister for orders, even though the cases should ordinarily be disposed of by or under the authority of the Minister-in-charge. In support of his submissions, he has relied upon a decision of this Court in the case of **P.K.Singh, D.P.O. vs. State of Haryana**, 1991(2) S.C.T. 705, a decision of the Supreme Court in the case of **M/s M.R.F. Ltd. vs. Manohar Parrikar**, 2010(11) SCC 374 and a decision of this Court in the case of **Al-Falah University and another vs. State of Haryana and others**, CWP No.14076 of 2015, decided on 15.09.2015.

Learned counsel appearing on behalf of the Pt. B.D. Sharma Univesity of Health Sciences, Rohtak has simply submitted that though the petitioner-society had applied for grant of consent of affiliation for Adesh Medical College and Hospital but in the absence of Essentiality Certificate/NOC by the State Government, it cannot be considered as it is the mandatory requirement in terms of Clause 4(K) Note of the Ordinance regarding conditions of affiliation of College & institutions (at page 14 of the University Calendar Vol-III) which says that *“for starting a new college/institution or for introducing a new subject/course or courses of study, it shall be incumbent upon the applicant/applicants to obtain, if applicable, a ‘no objection certificate’ from the Govt. of Haryana, without which no request for affiliation shall be entertained”*.

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Learned counsel for respondent No.3-UOI has made reference to the provisions of the Indian Medical Council Act, 1956 and the Establishment of Medical College Regulations, 1999 and has alleged that the Essentiality Certificate is required to be obtained from the State Government.

The petition is basically contested by respondents No.1 and 2 by alleging that the Chairman of the Society, namely, Dr. H.S.Gill had a terrorist background because of the past cases against him and the report of the Intelligence Bureau, Government of India and the ADGP, CID, Haryana, is that his presence in the State of Haryana by way of establishment of college may ultimately disturb the peace and tranquility and law and order situation in the State of Haryana. It is also submitted that an inspection team was constituted under the chairmanship of the Deputy Commissioner, Kurukshetra which inspected the site on 03.10.2015 and found various deficiencies which are mentioned in the impugned order.

It is further submitted that the resignation of Dr. H.S.Gill on 10.12.2015 from the primary membership and chairmanship of the petitioner-society does not wash out his previous antecedents/credentials and that the impugned order has been passed after complete consideration of the matter. It is further submitted by the State that the noting of the file are just a process of application of mind or the consultation process and has no effect until and unless the order is issued by the Governor or the President, as the case may be, and communicated. This has been argued to counter the argument of the petitioner that the file has been cleared by the Chief Minister, even if the Minister-in-charge was not inclined. In support of his

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submissions, he has relied upon a judgment of the Supreme Court in the case of **Shanti Sports Club and another vs. Union of India and others**, (2009) 15 Supreme Court Cases 705.

I have heard learned counsel for the parties and perused the available record including the noting portion of the file.

The petitioner has been informed by the Directorate of Medical Education and Research, Haryana, vide its letter dated 09.11.2015 with reference to inspection report dated 03.10.2015 that there were 3 deficiencies, which were found to be crucial in nature and were required to be made up before the case is considered for the grant of Essentiality Certificate/NOC. The said deficiencies were with regard to (i) no fire clearance, (ii) blood bank and (iii) lifts. In this regard, the petitioner made the following reply on 14.11.2015 in respect of all the 3 objections/much-less the deficiencies, which read as under:-

“i) **Fire Clearance:**

At the time of granting Partial Occupation of the Hospital Building the Department of Town and Country Planning Haryana vide their letter dated 01.09.2015 has granted US 90 days time to obtain NOC from Fire Dept (copy enclosed). We have, in time, applied to the concerned department vide our letter dated 21.10.2015 (copy enclosed) for the grant of NOC. Further the action is to be taken by the department. We hope that we will get the NOC from the department within the stipulated period. Deficiency, if any, pointed out by the department will be rectified on top priority by the society.

We submit that the required Fire Fighting & Safety Systems as per the norms have already been installed in the hospital building and the same are functional.

We further submit that we have employed a **Security Officer** and a **Fire Officer** to ensure that there is no incidence of

fire in the hospital.

ii) **Blood Bank:**

It is respectfully submitted that sufficient space and equipment required as per norms is provided for the Blood Bank in the Hospital building and adequate manpower employed for the purpose. We have already applied to the concerned authority for grant of license of blood bank. A joint inspection by the O/o the Central Drugs Standard Control Organisation (North Zone), (Directorate General of Health Sciences, Ministry of Health & Family Welfare, Govt. of India, Ghaziabad and O/o the Drugs Controller Haryana, Food and Drugs Administration Haryana at Panchkula on 06-11-2015 has already been conducted (copy enclosed). We hope that the blood bank license will be issued shortly after which our in-house blood bank will become operational immediately.

In the mean time we have tied up with the Civil Hospital Ambala for supply of Blood to our patients. This fact has already been verified and confirmed in the inspection report. The letter dated 24.08.2015 issued by Blood Transfusion Officer, General Hospital, Ambala in this regard is enclosed herewith.

iii) **Lifts:**

We have purchased nine numbers of Lifts from Schindler India limited four our campus. One Lift for ground plus eight floors has already been installed and is operational. The Second one is being installed. The vendor company vide its letter dated 19.10.2015 (Copy Enclosed) has assured that one lift (24 passenger/bed) will be operational in hospital Building within a period of 45 days from the date of letter i.e. 19-10-2015. It is ensured that the lift in the hospital will be operational within the 45 days period from the date of vendor's letter dated 19-10-2015."

However, in the impugned order, the respondents had made a reference of the fresh inputs received from the ADGP, CID, Haryana, vide letter dated 16.11.2015, raising serious apprehension about the security of the State because of the presence of Dr. H.S.Gill as the head of the institution being the chairman of the society. In the concluding part of the

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impugned order, the respondents has referred to environment clearance, functional blood bank and NOC from the Fire Department and misleading the state officials by producing fake patients. Besides these objections, the main objection has been taken about the safety and security of the State on the basis of the report of the ADGP, CID, Haryana because of the credentials of Dr. H.S.Gill who is alleged to have been involved in the criminal cases in the past and was allegedly associated with the terrorists. It may be pertinent to mention at this stage that on 16.11.2015, the Secretary of the Department observed that *“as recommended by DMER, we may consider the issuing of essentiality certificate/NOC in the Form-II as prescribed in the regulations without further delay, as the case is fixed for hearing on 20.11.2015. Hon'ble High Court has ordered that decision in either way is to be taken by the Government before the next date of hearing. Accordingly, matter is submitted for issuing of essentiality certificate/NOC subject to conditions as applicable on the basis of note above”*. The matter was put up before the Minister-in-charge/Health Minister who declined the issuance of essentiality certificate in view of the clear cut clarification from the reporting agencies. It was recorded by him that *“a warning from ADGP (CID) Haryana on the recommendation of Chief Minister Flying Squad was received vide their Letter No.1587 dated 05.08.2015 wherein it was mentioned that Dr. Harinder Singh Gill, Chairman of Adesh Welfare Society has a terrorist background and it would not be in public interest to allow such a person with terrorist background to set up University in Haryana. A Clarification on the above warning has already been sought from AGDP (CID) and Intelligence Bureau but till date no clarification*

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from any of the above agencies has been received. The Warning is indeed of very serious nature which cannot be ignored. Moreover ADGP (CID) has not removed his warning conveyed to the government vide his letter under reference and has only said in his comments to take a view accordingly is not sufficient to adjudge anything. In this case many peoples are approaching and trying to put unnecessary pressure at various levels which shows that unfair means have also been used by the institutions authorities to get issue the Essentiality Certificate. Above all, security of the State cannot be compromised at any cost. In view of the above Essentiality Certificate may be denied without having a clear cut clarification from the reporting agencies as quoted above”.

On 27.11.2015, the Secretary of the Department noted that “*based on facts mentioned on pre pages 65-72/NP particularly the observations of Hon'ble High Court, we may consider issuing of Essentiality Certificate/NOC to Adesh Welfare Society to set up Medical College at Mohri, Tehsil Shahabad, Distt. Kurukshetra. Matter is submitted to Hon'ble HM/CM”.*

On 02.12.2015, the Essentiality Certificate was denied by the Minister-in-charge only on the ground that Dr. H.S.Gill was involved in various criminal cases and had allegedly terrorist background. On 03.12.2015, the PSCM noted on the file that “*CM would like to have the benefit of opinion of A.G. on if the Essentiality Certificate can be denied on the above grounds noted by HM. He would appreciate on expeditious consideration since the Hon'ble High Court has desired a categorical decision before 09.12.2015”.* The matter was put up before the Advocate

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General, Haryana, who further delegated it to the Additional Advocate General, Haryana. The Additional Advocate General, Haryana, in his report dated 05.12.2015, observed that *“moreover, as per statutory provisions, the Essentiality Certificate/NOC can be denied only if the petitioner-society is not complying with any condition/requirement under law. Still further as observed by the Hon'ble Court, an institution is set up by the society and the society is run by the Managing Committee elected by its members and therefore, it is not the case where only one individual would be running the affairs of the society. In my considered opinion, therefore, the Essentiality Certificate/NOC cannot be denied to the petitioner-society on the grounds noted by the Hon'ble Health Minister”*. The said opinion was approved by the Chief Minister on 07.12.2015 as the noting is available to the effect that *“CM has seen the opinion of A.G. from NP 75 to 77. After the perusal, he has approved the proposal at 'A' on NP72”* but still the Minister-in-charge on 08.12.2015, on the basis of the report of the CID and Intelligence Bureau, asked the Chief Minister to reconsider the matter because of the security of the State. On the same day, PSCM put the note saying that *“CM would like to have the benefit of advise of A.G. please”*. On 08.12.2015, the Advocate General, Haryana, gave the opinion that *“no policy decision in the matter is involved. Sufficiency or insufficiency of material is required to be examined by the Competent Authority i.e. the Hon'ble Health Minister as whether essentiality certificate/NOC be granted or denied in the case. Health Minister has examined thrice material on record and other information available and decided that essentiality certificate/NOC be denied. As no policy is required to be laid down in the matter, let Hon'ble*

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Minister's order be permitted to be implemented". On the same day, it is mentioned that "CM stands apprised on phone".

In such a situation, the argument raised by the petitioner that in the ordinary course of business, it would be the primary responsibility of the Minister-in-charge of the department to take a decision pertaining to the business of the department but in case of conflict between the opinion of the Minister-in-charge and the Administrative Secretary, the decision has to be taken by the Chief Minister and also in respect of the cases which would or likely to affect the peace and tranquility of the State. The noting portions would show that the opinion of the Advocate General dated 05.12.2015 was initially approved by the Chief Minister on 07.12.2015 but on the noting dated 08.12.2015 of the Minister-in-charge, the Chief Minister again sought advise of the Advocate General, which was provided on the same day to the effect that the order of the Minister-in-charge be permitted to be implemented, which was duly informed to the Chief Minister and there is no other noting on the file. Accordingly, the impugned order was, thus, passed on 11.12.2015. In view thereof, the judgments relied upon by the counsel for the petitioner, referred to here-in-above, are not applicable as the noting portion cannot be of any advantage to the petitioner in view of the decision of the Supreme Court in **Shanti Sports Club's case (supra)** in which it has been held as under:-

"52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the

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case may be, authenticated in the manner provided in Articles 77 (2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government.”

The question still would be as to whether the Essentiality Certificate can be denied on the ground that Dr. H.S.Gill had been involved in criminal activities in the past and allegedly associated with the terrorists especially when he is no more a primary member much-less the chairman of the society?

The Court appreciates the concern of the Minister-in-charge about the security of the State but he does not deny that Dr. H.S.Gill was allegedly involved in criminal cases in the years 1983 and 1984. He has been acquitted in FIR No.153, discharged in FIR Nos.236 and 2011 and prosecution was withdrawn by the State in FIR No.162. Apparently, Dr. H.S.Gill had never been held guilty by any competent Court of law of any criminal charge which were registered against him more than 33 years ago. Thereafter, he had been the Chairman of numerous institutions of the society (already referred to in the earlier part of the order) without any blemish to his credentials and has now even resigned not only from the Chairmanship of the society but also from the primary membership of the society in order to remove any kind of doubt which may be entertained by the Intelligence Bureau of the Government on account of his alleged

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involvement in the criminal cases.

There is another aspect of the matter that if the Intelligence Bureau of the State knew about the presence of Dr. H.S.Gill on the scene when the LOI was issued and the 300 bedded hospital and medical college was being constructed by the society, then why at no point of time, any objection was raised in this regard. The society is not being run by one person rather it is being run by its members and there is no allegation of the kind against any other member of the society except for Dr. H.S.Gill who has now even left the society not only for the State of Haryana but also for the institutions which have flourished under his chairmanship in the State of Punjab. In the absence of any kind of cogent evidence or any activity on the part of Dr. H.S.Gill after 1983/1984 till today, the reason assigned in the impugned order for declining the Essentiality Certificate for his presence in the society is totally arbitrary, unreasonable and cannot be allowed to be sustained.

Insofar as the other deficiencies are concerned, it has been mentioned in the report dated 03.01.2016, when the hospital was again inspected by the Additional Director that one lift has been installed, the fire safety sensors system is being installed in the hospital and work is in progress and the refrigerating system and lab equipments have been placed in a proper blood bank area. These objections can always be removed at any time.

Thus, from the aforesaid discussion, this Court is of the considered opinion that the impugned order is patently illegal and arbitrary insofar as the Essentiality Certificate has been declined on the ground of the

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antecedents of Dr. H.S.Gill who has even left the primary membership and chairmanship of the society itself and the same is hereby quashed. The respondents are hereby directed to issue the Essentiality Certificate to the petitioner, after satisfying themselves with the removal of other three objections/deficiencies regarding fire safety, lifts and the blood bank. The respondents may inspect the institution of the petitioner by giving them a notice and take an appropriate decision in this regard, as early as possible, preferably within a period of one month, from the date of receipt of certified copy of this order.

With these observations, the present petition stands disposed of.

July 04, 2016
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(Rakesh Kumar Jain)
Judge