



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
18.07.2018	05.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

Writ Petition No.4166 of 2018

Annai Medical College and Hospital,
An Institution established by
Sri Devi Karumariamman Educational Trust,
represented by its Trustee R.Vijayakumar,
Registered Office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road,
Valasaravakkam,
Chennai 600 087.

... Petitioner

vs.

1. The Principal Secretary to Government,
Health & Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Secretary,
Medical Council of India,
Pocket 14, Sector - VIII,
Dwaraka, New Delhi - 110 077.
3. The Health Secretary,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan,
New Delhi - 110 011.
4. The Tamil Nadu Dr.M.G.R. Medical University,
rep. by 'The Registrar'
69, Anna Salai, Guindy,
Chennai 600 032.
5. Sri Devi Karumariamman Educational Trust,
represented by its Trustee,
Registered Office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road,
Valasaravakkam,
Chennai 600 087.

... Respondents



Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, forbearing the 2nd Respondent from invoking/encashing the 3 Performance Bank Guarantees, all dated 01.09.2016, bearing B.G.No.1384ILG001016 for Rs.7.50 Crores, B.G.1384ILG000916 for Rs.2.00 Crores and B.G.No.1384ILG000816 for Rs.2.00 Crores, in all, totalling a sum of Rs.11.50 Crores, established by the Punjab National Bank in favour of the 2nd Respondent for and on behalf of the Petitioner College and Hospital as stated in their letter in MCI-34(41)(Gen.)/2017-Med./173295, dated 09.02.2018, without first following the due procedure and affording necessary opportunity to the Petitioner as mandated by the Hon'ble Supreme Court under its order dated 14.09.2017 made in W.P.(Civil) No.525 of 2017.

For Petitioner & 5th Respondent	:	Mr.P.S.Raman, Senior Counsel for M/s.Waraon and Sai Rams
For 1st Respondent	:	Mrs.V.Annalakshmi, Government Advocate
For 2nd Respondent	:	Mr.V.P.Raman
For 3rd Respondent	:	Mr.B.Rabu Manohar
For 4th Respondent	:	Mr.D.Ravichander

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O R D E R

Petitioner/Institution has come up with the present Writ Petition seeking to forbear the 2nd Respondent from invoking/encashing the three Performance Bank Guarantees, all dated 01.09.2016, bearing B.G.No.1384ILG001016 for Rs.7.50 Crores, B.G.1384ILG000916 for Rs.2.00 Crores and B.G.No.1384ILG000816 for Rs.2.00 Crores, in all, totalling a sum of Rs.11.50 Crores, established by the Punjab National Bank in favour of the 2nd Respondent for and on behalf of the Petitioner College and Hospital, as stated in their Letter in MCI-34(41)(Gen.)/2017-Med./173295, dated 09.02.2018, without first following the due procedure and affording necessary opportunity to the Petitioner as mandated by the Supreme Court vide its order dated 14.09.2017 made in W.P.(Civil) No.525 of 2017.

2. The case of the Petitioner/Institution is, as under:

2.1. Sri Devi Karumariamman Educational Trust, the 5th Respondent herein, is a Public Charitable Educational Trust, founded by one G.Jayaraman. It has established an Engineering College, School of Management and Computer Applications at Pennalur Village, Sriperumbudur Taluk, Kancheepuram District and



३.५ प्रत्येक पंक्ति में

2.5. The New Trustees pumped in moneys in excess of Rs.70



Crores for the purpose of establishing the Petitioner/Institution and for creating necessary infrastructure, Laboratories, Equipments, facilities as well as the expenses incurred for its day to day management and administration, directly and through their connected entities, which exceeded Rs.2.00 crores per month, as was contemplated under the Agreement, dated 20.08.2015 and the subsequent Undertaking dated 19.09.2016 entered into between the New Trustees and the Founding Trustees of the 5th Respondent/Trust.

2.6. As per Regulation 2(7) of the Medical Council of India, the New Trustees had to arrange for providing Performance Bank Guarantees in favour of the 2nd Respondent for a total sum of Rs.11.50 crores. Since the 5th Respondent/Trust or the Founding Trustees did not have the financial means to arrange for the said Bank Guarantees, the New Trustees had requested one of their Associate entity viz. Rajalakshmi Medical Education and Research Foundation (RMERF) to arrange for the said Bank Guarantee to be given in favour of the 2nd Respondent for a total value of Rs.11.50 crores, on behalf of the Petitioner/Institution, so as to obtain permission to start the new Medical College. On the request made by the New Trustees, RMERF had instructed their Banker, viz. the Punjab National Bank, Anna Nagar Branch, Chennai - 40 to furnish the said Bank Guarantees in favour of the 2nd Respondent for and on behalf of the Petitioner and accordingly, the Punjab National Bank had issued the following Bank Guarantees in favour of the 2nd Respondent.

Date	Amount (Rs.)	Bank Guarantee No.	Term
01.09.2016	7,50,00,000/-	1384ILG001016	5 Years
01.09.2016	2,00,00,000/-	1384ILG000916	5 Years
01.09.2016	2,00,00,000/-	1384ILG000816	1 Year

2.7. Thereafter, the 4th Respondent/Tamil Nadu Dr. M.G.R. Medical University, had granted affiliation to the Petitioner/Institution vide its letter dated 21.09.2016, in pursuance of which, 146 students were admitted for the First Year M.B.B.S. Course, through NEET and State Government Counselling and the Petitioner/Institution started functioning.

2.8. Since the Founding Trustees were evidently acting against the interest of the 5th Respondent/Trust by not allowing the New Trustees to manage and administer the Petitioner/Institution, the New Trustees filed a Suit under Section 92 C.P.C. seeking intervention of the Court to permit a Scheme for the better management and administration of the Trust

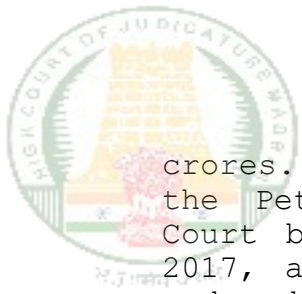


before the District Judge - II, Kancheepuram and the same is pending. In the meanwhile, the Founding Trustees illegally convened another EGM on 07.06.2017 and passed a Resolution removing the New Trustees from the Trusteeship of the 5th Respondent/Trust, in clear contravention of the amendments carried out to the Deed of Declaration of Trust. Thereafter, the Founding Trustees filed a Suit in O.S.No.56 of 2017 on the file of the District Judge-II, Kancheepuram and obtained an order of interim injunction dated 21.07.2017 in I.A.No.345 of 2017, restraining the New Trustees from interfering with the Management and Administration of the 5th Respondent/Trust and its Institutions. Thereafter, the Founding Trustees took control over the Management and Administration of the Petitioner/Institution from the New Trustees, with effect from 24.07.2017.

2.9. The New Trustees, being aggrieved by the order of interim injunction granted in I.A.No.345 of 2017 in O.S.No.56 of 2017, preferred C.M.A.No.2343 of 2017 on the file of this Court, and the same was allowed by this Court, vide its order dated 13.09.2017. Being aggrieved by the same, the Founding Trustees preferred S.L.P.(Civil) No.25584 of 2017 on the file of the Supreme Court and the same is still pending disposal.

2.10. Thereafter, the 2nd Respondent conducted an inspection of the Petitioner/Institution and found that the Institution was lacking in some facilities and requirements and accordingly, the 2nd Respondent recommended to the 3rd Respondent to debar the Petitioner/Institution for two Academic years and also sought permission to encash one of the Bank Guarantees for Rs.2 crores submitted for the first renewal assignment. In pursuance thereof, the 3rd Respondent vide its order dated 31.05.2017, debarred the Petitioner from admitting the students for two Academic Years viz. 2017-18 and 2018-19 and further authorized the 2nd Respondent to encash the Bank Guarantee of Rs.2 crores submitted by RMERF for and on behalf of the Petitioner/Institution.

2.11. Challenging the said order of the 3rd Respondent, the Petitioner/Institution filed W.P.(Civil) No.525 of 2017 before the Supreme Court and the Supreme Court, vide its order dated 17.07.2017, had granted an order of interim stay of encashment of the said Bank Guarantee by the 2nd Respondent. The 3rd Respondent was also directed to give a fresh opportunity of hearing to the Petitioner/Institution. After affording a personal hearing in the matter, the 3rd Respondent passed a final order dated 10.08.2017, reiterating its earlier decision dated 31.05.2017 to debar the Petitioner/Institution from admitting the students for two Academic Years 2017-18 and 2018-19 and to authorize the 2nd Respondent to encash the Bank Guarantee of Rs.2



crores. Challenging the subsequent order of the 3rd Respondent, the Petitioner/Institution once again approached the Supreme Court by filing I.A.No.84899 of 2017 in W.P.(Civil) No.525 of 2017, and after hearing the parties, the Supreme Court, by an order dated 14.09.2017, had set aside the order dated 10.08.2017 passed by the 3rd Respondent.

2.12. As directed by the Hon'ble Supreme Court in its order dated 14.09.2017, the 2nd Respondent conducted an inspection of the Petitioner/Institution on 3rd and 4th November 2017 and the Inspection Report thereof has been forwarded to the Oversight Committee for consideration. Thereafter, the Petitioner/Institution has not been called for any hearing by the Oversight Committee, nor had the 2nd and 3rd Respondents granted time for rectification of the deficiencies. Therefore, it is the case of the Petitioner/Institution that the 2nd and 3rd Respondents cannot invoke the Performance Bank Guarantees furnished on behalf of the Petitioner/Institution by the Punjab National Bank, until final order is passed by the 3rd Respondent in this regard, after affording an opportunity to them, in terms of the order dated 14.09.2017 passed by the Supreme Court.

2.13. Pursuant to the order dated 22.12.2017 passed by this Court in a batch of Writ Petitions in W.P.Nos.25215, 26285, 26177, 26556, 28262 and 28444 of 2017, filed by the students of the Petitioner/Institution, seeking transfer to the Government Colleges in the State, the 1st Respondent, vide their order dated 29.12.2017, had sought permission to the 2nd Respondent to accommodate the students of the Petitioner/Institution in 21 Government Medical Colleges in the State. Under the said Letter, the 1st Respondent had also requested the 2nd Respondent to invoke the Bank Guarantees to the tune of Rs.11.50 crores submitted on behalf of the Petitioner/Institution for its alleged failure to establish the Medical College and Teaching Hospital facilities and infrastructure. The 2nd Respondent, vide its letter dated 09.02.2018 addressed to the 3rd Respondent, has stated that the Executive Committee of the 2nd Respondent has directed the Office of the 2nd Respondent to invoke the Bank Guarantees submitted by the Trustees of the Petitioner/Institution and remit the proceeds thereof, to the Government of Tamil Nadu. Aggrieved by the decision of the Executive Committee of the 2nd Respondent vide its letter dated 09.02.2018, the Petitioner/Institution is before this Court by way of the present Writ Petition.

3. The 1st Respondent/Principal Secretary to Government, Health and Family Welfare Department, Chennai, has filed counter affidavit to the following effect:



3.1. One K.Venkatesan, Sriperumbudur Taluk, Kancheepuram District, in his Petition dated 03.05.2011 has brought to the notice of the Government that there was no full-fledged 300 bedded Hospital and required Buildings as per the Medical Council of India norms for starting a new Medical College and they are only under construction stage and the 5th Respondent/Trust had shown the Engineering College Buildings to the Inspection Team. Based on the said complaint, the Government directed the Dean, Madras Medical College, Chennai to conduct a surprise inspection to the Medical College and Hospital.

3.2. In his Report, the Dean, Madras Medical College has stated that the Petitioner/Institution has no full-fledged 300 bedded Hospital and other required buildings as per the Medical Council of India norms for starting a new Medical College. Accepting the Report of the Inspection conducted by the Dean, Madras Medical College, Chennai, the Essentiality Certificate already issued in Government Letter No.34797/MCA2/2010-2, Health and Family Welfare Department, dated 30.09.2010 to the 5th Respondent herein, for the establishment of a new Medical College in the name and style of 'Annai Medical College and Hospital' at Pennalur, Sriperumbudur, Kancheepuram District, with an annual intake of 150 seats from the academic year 2011-2012, was cancelled vide Government Letter No.17797/MCA-2/2011-1, Health and Family Welfare Department, dated 11.05.2011, with a copy of the letter marked to the Government of India/Medical Council of India.

3.3. By suppressing the fact that the Essentiality Certificate given by the Government of Tamil Nadu was subsequently cancelled by the Government of Tamil Nadu, the 5th Respondent/Trust again applied to the Medical Council of India, New Delhi, for getting Letter of Permission for starting a new Medical College at Kancheepuram District for the year 2013-14. But, the Medical Council of India has not given the Letter of Permission, as requested by the 5th Respondent/Trust for the year 2013-14.

3.4. The Government of India informed that the Oversight Committee has approved the Annai Medical College Hospital and Research Centre for admission of students for the academic year 2016-17 and accordingly, Letter of Permission was issued to the 5th Respondent/Trust for establishment of Annai Medical College with an annual intake of 150 MBBS seats for the academic year 2016-17, subject to furnishing certain documents. Based on the Letter of Permission granted by the Medical Council of India, the students were admitted in the MBBS Course for the academic year 2016-17 in the said College.



3.5. Since the conditions imposed by the Oversight Committee has not been fulfilled and certain deficiencies still persist, the Ministry of Health and Family Welfare, Government of India, New Delhi, in its reference dated 31.05.2017, has decided to debar the recognition given to the Petitioner/Institution. Further, based on the recommendations of the Hearing Committee, the Ministry of Health and Family Welfare, Government of India, New Delhi has again reiterated its earlier decision, dated 31.05.2017 to debar the College from admitting students for a period of two years, i.e. 2017-18 and 2018-19 and authorized the Medical Council of India to encash the Bank Guarantee of Rs.2 crore. Thereafter, the Petitioner/Institution has filed W.P.(C) No.525 of 2017 before the Supreme Court of India and got favourable orders.

4. To the Counter Affidavit filed by the 2nd Respondent/Medical Council of India, the Petitioner/Institution has filed its Rejoinder. Relevant portion of the Rejoinder is extracted below:

"21. The Petitioner submits that as per the direction of the Hon'ble Supreme Court, the 2nd Respondent had deputed an Inspection Team to conduct inspection of the Petitioner College during November 2017. At that time, the College was not functioning due to the disputes between the two groups of Trustees and the students were before this Hon'ble Court seeking transfer to the other Medical Colleges in the State. Hence, the said Inspection Committee found substantial deficiencies in the faculties and facilities. However, pursuant thereto, the 2nd and 3rd Respondents can only act in accordance with the directions given by the Hon'ble Supreme Court. The 2nd Respondent has to put the Petitioner on notice regarding the deficiencies found by the Inspection Committee and should be give sufficient time to remove those deficiencies within a period to be stipulated by the 2nd Respondent. In case, the Petitioner fails to remove the deficiencies and communicate the same to the 2nd Respondent within the stipulated time, the 2nd Respondent has to once again verify the position and then submit its recommendation to the 3rd Respondent, who shall then take a final decision within one month of the receipt of the recommendation from the 2nd Respondent. The Hon'ble Supreme Court has further



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directed that until a final decision is taken by the 3rd Respondent and communicated to the Petitioner, the Bank Guarantee submitted by the Petitioner shall not be invoked. In the instant case, after completion of the inspection in November 2017, there has been no communication from the 2nd Respondent to the Petitioner pointing out the deficiencies or granting time for rectifying the said deficiencies as directed by the Hon'ble Supreme Court. On the contrary, the 2nd Respondent unanimously proceeded to consider the request made by the 1st Respondent and has recommended the invocation of both the Bank Guarantees submitted by the Petitioner in contravention of the order passed by the Hon'ble Supreme Court.

22. The Petitioner further submits that the 1st Respondent cannot seek to enrich themselves out of their own faults. It was the 1st Respondent, who had absolute knowledge regarding the status of the Essentiality Certificate issued to the Petitioner College. If the contention of the 1st Respondent that the Essentiality Certificate was withdrawn in the year 2011 itself, they ought to have communicated the same to the 2nd and 3rd Respondents or in the least, raised a Red Flag when the Petitioner College was granted conditional LOP by the Oversight Committee and the subsequent permission granted by the 3rd Respondent. Similarly, the 4th Respondent, who is the Affiliating University has also conducted numerous inspections of the Petitioner College from the year 2015 and has granted affiliation to the Petitioner College and issued NOC for admitting the students for the Academic Year 2016-17. Thus, both the 1st and 4th Respondents have been completely negligent in their approach towards the Petitioner College, which, in turn had prompted the New Trustees to admit 146 students for the first year MBBS Course. Therefore, by no stretch of imagination can the 2nd Respondent contend that they are entitled to invoke the Bank Guarantee submitted by the Petitioner for the purpose



of compensating the 1st Respondent, by whose default, the present debacle has occurred.”

5. Mr.P.S.Raman, learned Senior Counsel appearing for the Petitioner/Institution contended that the Executive Committee of the 2nd Respondent/Medical Council of India, ought to have seen that the order dated 31.05.2017 passed by the 3rd Respondent debarring the Petitioner/Institution for two Academic Years and further authorizing the 2nd Respondent to encash one of the Performance Bank Guarantees for Rs.2 Crores was stayed by the Supreme Court under its order dated 17.07.2017, thereby questioning the reasonableness of the findings given by the 3rd Respondent. He further contended that the Executive Committee of the 2nd Respondent/Medical Council of India ought to have seen that in the instant case, no further action has been taken by the 2nd Respondent or the 3rd Respondent after completion of the inspection on 3rd/4th November 2017, as mandated by the Supreme Court.

6. The learned Senior Counsel appearing for the Petitioner/Institution went on to contend that the Executive Committee of the 2nd Respondent ought to have seen that the process stipulated by the Apex Court vide its order dated 14.09.2017 made in W.P.(Civil) No.525 of 2017 is yet to be completed by the 2nd and 3rd Respondents and therefore, the decision taken to invoke the Bank Guarantees and to pay the proceeds thereof to the 1st Respondent is wholly illegal, arbitrary and is violative of the directions issued by the Apex Court. He submitted that invocation of Bank Guarantees at this premature stage would cause great financial loss and prejudice to the Petitioner and the New Trustees, inasmuch as the New Trustees have already infused more than Rs.70 crores to establish the Petitioner/Institution.

6.1. Learned Senior Counsel for the Petitioner has relied on a decision of the Apex Court in the case of Chintpurni Medical College and Hospital vs. State of Punjab and Others, in W.P. (Civil) No.89 of 2018, wherein, it is held as under:

“28. Moreover, no provision of the IMC Act confers any power on the State Government or Union Territory Administration to issue an Essentiality Certificate. What the Regulations do, as discussed above, is lay down that an Essentiality Certificate is the qualifying criterion for making an application for opening a medical college. In that sense, the provision recognizes an Essentiality Certificate issued by the State Government. It is



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nobody's case that the State Government is conferred with the power or duty to issue such a certificate under any State law. In any case, in view of the fact that the field is occupied by a parliamentary law i.e. IMC Act, 1956, a State law even if already existing would have no efficacy in the field. As a consequence, the executive power of the State under Article 162 cannot be invoked.

29. The Essentiality Certificate, therefore, must be taken to have been issued under the IMC Act read with Regulations and not in exercise of any independent power of the State. Significantly, where no power to issue certificate is shown to have been conferred by the IMC Act or the Regulations, it would be futile to enquire if a corresponding power to withdraw the same has been conferred on the 21 State. Even assuming that a power to issue such a certificate has been impliedly conferred by the Regulations under the Act, certainly, no power to withdraw the same has been so conferred. Such a power cannot be arrogated relying on Section 21 of the General Clauses Act.

32. We are of the view that the case before us presents a similar situation where the petitioner college has acted on the Essentiality Certificate and has established a college which has functioned; may be deficiently. The conditions having changed since the grant of the Essentiality Certificate, Section 21 is not available in the absence of any power to withdraw conferred by the IMC Act.

33. In view of the above, we find that Condition No.(XI) is ultravires the provisions of the IMC Act and Regulations. In the result, the order dated 01.11.2017, issued by Respondent No. 1- State of Punjab, withdrawing the Essentiality Certificate is quashed and



set aside and Condition Nos.(VII) and (XI) are declared illegal."

7. In reply, Mr.V.P.Raman, learned Counsel appearing for the 2nd Respondent/Medical Council of India, submitted that the order dated 14.09.2017 passed by the Apex Court in W.P.(C) No.525 of 2017, covers only one Bank Guarantee of Rs.2 crores and that the said order of the Apex Court cannot restrict the encashment of the Bank Guarantee with respect to other two Bank Guarantees, amounting to Rs.7.5 crores. According to the Learned Counsel, admittedly, the Petitioner/Institution has failed to perform, as the entire first batch of students have been transferred out of the College pursuant to the order of this Court dated 22.12.2017 made in W.P.No.25215 of 2017 and consequently, the Letter of Permission itself ceased to exist in the eyes of Law.

7.1. It is further submitted by the learned Counsel appearing for the 2nd Respondent/Medical Council of India that the transfer of students to Government Medical Colleges pursuant to the order of this Court dated 22.12.2017, was possible only by the utilization of the Essentiality Certificate, wherein, the State Government undertook the responsibility for the students. Once the transfer of the students is complete, the Undertaking given by the State Government therein does not subsist for the future. As a necessary consequence, the Essentiality Certificate, being a founding document for the Letter of Permission issued on 20.08.2016, also does not subsist and the same Essentiality Certificate cannot be the base for considering renewal of permission for 2018-19, since, as on date, it does not exist in the eyes of Law.

7.2. Citing reference to a Supreme Court decision in the case of U.P. State Sugar Corporation vs. SUMAC International, (1997) 1 SCC 568, learned Counsel appearing for the 2nd Respondent/Medical Council of India, contended that the Bank Guarantees sought to be restrained from invocation are unconditional in nature and that the requirements to restrain invocation of Bank Guarantee are not satisfied by the Petitioner/Institution. For better appreciation, relevant portion of the said decision is extracted hereunder:

"16. Clearly, therefore, the existence of any dispute between the parties to the contract is not a ground for issuing an injunction to restrain the enforcement of bank guarantees. There must be a fraud in connection with the bank guarantee. In the present case we fail to see any such fraud. The High Court seems to have come to the



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conclusion that the termination of the contract by the appellant and his claim that the time was of the essence of the contract, are not based on the terms of the contract and, therefore, there is a fraud in the invocation of the bank guarantee. This is an erroneous view. The disputes between the parties relating to the termination of the contract cannot make invocation of the bank guarantees fraudulent. The High Court has also refereed to the conduct of the appellant in invoking the bank guarantees on an earlier occasion on 12th of April, 1992 and subsequently withdrawing such invocation. The court has used this circumstance in aid of its view that the time was not of the essence of the contract. We fail to see how an earlier invocation of the bank guarantees and subsequent withdrawal of this invocation make the bank guarantees or their invocation tainted with fraud in any manner. Under the terms of the contract it is stipulated that the respondent is required to give unconditional bank guarantees against advance payments as also a similar bank guarantee for due delivery of the contracted plant within the stipulated period. In the absence of any fraud the appellant is entitled to realise the bank guarantees."

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is seen that for the academic year 2016-2017, the Petitioner/Institution was granted permission with an annual intake of 150 MBBS seats, subject to furnishing certain documents. Out of 150 seats, 146 students were admitted in the Petitioner/Institution for the first year, both under the State Government Quota as well as under the Management Quota. In November 2016, the Medical Council of India conducted an inspection in the Petitioner/Institution and found that no sufficient infrastructure was available therein. In view of the persistence of certain deficiencies, the Ministry of Health and Family Welfare, Government of India, vide Letter dated 31.05.2017 decided to debar the recognition to the Petitioner/Institution for a period of two years and authorized the Medical Council of India to encash the Bank Guarantee of Rs.2 crores.



10. Challenging the said communication as regards encashment of the Bank Guarantee by the Medical Council of India, the Petitioner/Institution filed W.P.(Civil) No.525 of 2017 before the Supreme Court and by an order dated 17.07.2017, the Supreme Court had granted an order of interim stay of encashment of the said Bank Guarantee by the 2nd Respondent. Thereafter, by an order dated 14.09.2017 in I.A.No.84899 of 2017 in W.P.(Civil) No.525 of 2017, the Supreme Court passed the following order:

"(iv) We direct that until the final decision is taken by the Ministry and communicated to the petitioners, the Bank Guarantee offered by the petitioners in the sum of Rs.Two Crore shall not be encashed by the MCI but the petitioners shall keep the same alive. In the event the final decision of the Competent Authority of the Central Government is adverse to the petitioners, it will be open to them to take recourse to such remedies as may be permissible in law."

11. It is further seen that no candidate has been admitted to the Petitioner/Institution for the academic year 2017-2018. Further, based on the order dated 22.12.2017 passed by this Court in W.P.Nos.25215, 26085, 26177, 26556, 28262, 28374 & 28444 of 2017 (filed by the first year students of the Petitioner/Institution of the academic year 2016-17), the students of the Petitioner/Institution have been absorbed in the Government Medical Colleges. For better appreciation, relevant portion of the said order passed by this Court, is extracted hereunder:

"35.This Court is aware that 85% attendance is a must for medical students and only 10% condonation is permitted on medical grounds. The students have not attended the classes from the first week of October 2017 contending that the infrastructures available in the 6th respondent College are insufficient and there is no conducive atmosphere for learning. Thus, the students have lost their attendance for the past three months. The attendance should not be a problem, if the students are accommodated in the Government Medical Colleges. Therefore, the State Government and Tamil Nadu Dr.MGR Medical University are directed to take necessary steps to conduct special classes for the newly accommodated students, so that the lost attendance could be regained and



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there will not be any hindrance for them to write the examination and they could be brought on par with the regular students. The students who are already attending the classes in the 6th respondent College are at liberty to attend the Special classes to enrich their knowledge and there is no compulsion on their part to attend the classes, as they have already secured necessary attendance.

36. Therefore, it is the duty of the Government to accommodate the students studying in the 6th respondent College in the Government medical colleges by distributing them according to their merits. The students studying in the Government quota as well as the Management quota have to be accommodated and there cannot be any discrepancy between them. It is made clear that in future, the newly accommodated students shall not claim any parity in payment of fees as that of the students who are directly admitted in the Government Medical Colleges through counselling.

37. In view of the above reasons, this Court issues the following directions:

"1. The State Government shall send a proposal to the Medical Council of India to accommodate the students studying in the 6th respondent College, within a period of one week from the date of receipt of a copy of this order.

2. The Medical Council of India, on receipt of the said proposal, shall take a decision and forward the same to the Hon'ble Apex Court monitored Oversight Committee within one week therefrom.

3. The Oversight committee shall take a decision within a period of one week from the date of receipt of the decision of the MCI committee and forward the same to the Ministry of Health and Family Welfare.



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4. The Ministry of Health and Family Welfare shall pass necessary orders increasing the number of seats in Government Medical Colleges and approve the accommodation of students studying in the 6th respondent College in the 22 Government Medical Colleges functioning in the State of Tamil Nadu.

5. Tamil Nadu Dr.MGR Medical University and the State Government shall make necessary arrangements to conduct special classes to the accommodated students from the 6th respondent Medical College, so that the lost attendance could be made good and the newly admitted students could be brought on par with the regular students.

6. The new trustees viz., Respondents 7 & 8 (Rajalakshmi Group) are directed to return all the certificates to the 6th respondent College students within a period of one week from the date of receipt of a copy of this order.

7. The 6th respondent Medical college shall give necessary certificates as required by the Government to the individual students so that their accommodation in Government Medical Colleges will be made very easy without any problem.

8. The students are required to file an affidavit stating that they shall pay the fees fixed by the fee fixation committee applicable for private medical colleges every year.""

12. The present Writ Petition proceeds on the basis of the order dated 14.09.2017 passed by the Supreme Court in I.A.No.84899 of 2017 in W.P.(Civil) No.525 of 2017, wherein, the Supreme Court has held that the Bank Guarantee offered by the Petitioner/Institution for a sum of Rs.2 crores, shall not be encashed by the Medical Council of India. In any event, the said order passed by the Supreme Court has nothing to do with



two other Performance Bank Guarantees, one to the tune of Rs.7.5 crores and another to the tune of Rs.2 crores, submitted by Rajalakshmi Medical Education and Research Foundation (RMERF), for and on behalf of the Petitioner.

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13. The issue for consideration in the present Writ Petition is whether the Letter of Permission granted to the 5th Respondent/Trust for the establishment of the Petitioner/Institution, is still alive or not.

14. It is the case of the Petitioner/Institution that Regulation 2(7) of the Medical College Regulations, 1999 clearly stipulates furnishing of two Performance Bank Guarantees from a Scheduled Commercial Bank for a period of five years, in favour of the Medical Council of India, New Delhi, as qualifying criteria, for the establishment of a Medical College and its infrastructural facilities and accordingly, the Petitioner/Institution has furnished three Bank Guarantees in favour of the 2nd Respondent/Medical Council of India for a total value of Rs.11.50 crores. It is their contention that the said Bank Guarantees cannot be invoked for any other purposes by the 2nd Respondent/Medical Council of India and consequently, the decision taken by the Executive Committee of the 2nd Respondent/Medical Council of India, communicated under the Letter dated 09.02.2018 directing encashment of the Bank Guarantee to the tune of 11.50 crores, is wholly arbitrary and violative of the said Regulations.

15. While so, the 2nd Respondent/Medical Council of India has stated that there was an infight between the Founding Trustees and the New Trustees of the 5th Respondent/Trust, due to which, the education of the students of the Petitioner/Institution was affected and therefore, the students approached this Court with a prayer to shift them to Government Medical Colleges. Hence, according to the 2nd Respondent/Medical Council of India, the Petitioner/Institution has no locus standi to claim the Bank Guarantees furnished to the Medical Council of India.

16. Furthermore, according to the 2nd Respondent/Medical Council of India, the Letter of Permission no longer exists in the eye of Law. It is the case of the 2nd Respondent/Medical Council of India that every year, inspection would be conducted in the Petitioner/Institution and if the deficiencies pointed out by the Medical Council of India are not rectified by the Institution, then the Medical Council of India is entitled to invoke the Performance Bank Guarantee furnished by the Institution.

17. On a reading of the order dated 22.12.2017 passed by



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this Court in W.P.Nos.25215, 26085, 26177, 26556, 28262, 28374 & 28444 of 2017, it is very clear that the Letter of Permission granted to the Petitioner/Institution no longer subsists in the eye of Law, as 146 first year students of 2016-17 batch of the Petitioner/Institution have been absorbed to Government Medical Colleges. Though, there is a dispute between the Trustees, the Associate entity of the 5th Respondent/Trust, viz. Rajalakshmi Medical Education and Research Foundation (RMERF), is trying to save the skin and money of the Petitioner/Institution by seeking to implead themself as a party to the Writ Petition, which, in view of this Court, is not permissible.

18. At the cost of repetition, this Court makes it clear that furnishing of Performance Bank Guarantees is only for the purpose of establishment of a Medical College and its infrastructural facilities. Here, the 5th Respondent/Trust by furnishing three Bank Guarantees, to the tune of Rs.11.5 crores to the 2nd Respondent/Medical Council of India, has established the Petitioner/Institution. However, the inspection conducted in the Petitioner/Institution reveals that the Petitioner has not rectified the deficiencies pertaining to infrastructure. Hence, the 1st Respondent has directed the 2nd Respondent/Medical Council of India to invoke the Bank Guarantee to the tune of Rs.2 crores.

19. Moreover, the first year students of 2016-17 batch of the Petitioner/Institution have been transferred to Government Medical Colleges. Hence, the conditional letter of permission issued to the Petitioner/Institution on 20.08.2016 does not subsist and thus, it cannot be the base for considering the renewal of permission for 2018-19.

20. The contention of the learned Senior Counsel appearing for the Petitioner/Institution that the Civil Court has no bar to insist the Bank Guarantee may be correct. But, when the Regulations are very clear and when the Petitioner has not availed the opportunity given by the Supreme Court, by an order dated 14.09.2017 in W.P.(C) No.525 of 2017 and this Court, by an order dated 22.12.2017 in W.P.Nos.25215, 26085, 26177, 26556, 28262, 28374 & 28444 of 2017, the contention of the Petitioner/Institution that they have to be given an opportunity may not be valid in the eye of Law.

21. Also, it is to be noted that the Petitioner/Institution has not challenged the Letter dated 09.02.2018 of the 2nd Respondent/Medical Council of India, which has decided to invoke the Bank Guarantee and remit the money to the State Government. Instead of seeking a Writ of Certiorari, the Petitioner/Institution has sought a bare Mandamus to restrain the invocation of the Bank Guarantee. In view of this Court,



the relief sought by the Petitioner/Institution cannot be granted, while the letter dated 09.02.2018 continues to remain in force. Even assuming that the prayer is going to be amended, there are no bonafide reasons to grant the relief sought for by the Petitioner. Under some pretext or the other, the Petitioner/Institution is trying to hoodwink the truth, and hence, is not entitled to the relief sought for.

22. In view of the foregoing discussion, the Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.5118 of 2018 and W.M.P.No.18408 of 2018 are closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar
(aeb)

To:

1. The Principal Secretary to Government,
Health & Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai 600 009.
2. The Secretary,
Medical Council of India,
Pocket 14, Sector - VIII,
Dwaraka, New Delhi - 110 077.
3. The Health Secretary,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, New Delhi - 110 011.
4. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
69, Anna Salai, Guindy, Chennai 600 032.

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.68671
+1cc to Mr.V.P.Raman, Advocate, S.R.No.68702
+2cc to M/s.Waraon and Sai Rams, Advocate, S.R.No.68884

W.P.No.4166 of 2018

MG(CO)
CS/12/10/18