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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th May, 2019

+ W.P.(C) 5853/2019 and CM Nos.25498/2019, 25499/2019

SARASWATI EDUCATION SOCIETY Petitioner

Through: Mr. Ashish Kumar, Adv.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr. Manoj Kohli, CGSC for
R-1

Mr. T. Singhdev, Ms. Puja Sarkar, Mr.
Tarun Verma,

Ms. Biakthansangi Das and Ms. Arunima
Pal, Advs. for R-2/MCI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

27.05.2019

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1. The petitioner, which claims to be a charitable trust, which was intending to set up a Medical College at Raigarh, Maharashtra, applied, for permission to do so, for the academic year 2019-2020, to the Ministry of Health and Family Welfare (hereinafter referred to as the "Ministry"). The said application was forwarded, by the Ministry, to the Medical Council of India (MCI), for the MCI to evaluate the proposal and make recommendations thereon, under Section 10A of the Indian Medical Council Act, 1956 for the said academic session 2019-2020.

2. Sub-section (1) of Section 10A of the MCI Act, reads thus :

“10(a) (1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) Open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study obtaining (including a post-graduate course of study or training),

except with the previous permission of the Central Government obtained in University or a trust but does not include the Central Government.

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

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

from time to time for being admitted to such course or training.”

3. Section 33 of the IMC Act, confers, on the MIC, the power to make regulations, with the provisions sanctioned by the Central Government, to carry out the purposes of the Act, and, as is the norm in such cases, also sets out certain specific dispensation, in respect of which, regulations could be framed.

4. In exercise of the powers conferred by Section 10A read with Section 33 of the IMC Act, the MCI framed the Medical Council of India Establishment of Medical College Regulations, 1999 (hereinafter referred to as the “1999 Regulations”). Regulation 2 of the 1999 regulations sets out the qualifying criteria, which are required to be fulfilled by eligible persons applying for permission to establish a medical college. Sub-regulation (iii) thereof requires the person to produce an “essentiality certificate” in form 2 in the following terms :

“(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.”

5. Form 2, annexed to the 1999 Regulations, provided the format for the essentiality certificate, to be furnished by the person seeking to establish a medical college. The said certificate required the applicant

to certify regarding various aspects. These aspects were, prior to 31st March, 2017, only four in number, enumerated as “(a)” to “(d)”. Three more stipulations, which were required to be contained in the essentiality certificate were added, by notification dated 31st January, 2017, and enumerated “(e)” to “(g)”. These seven aspects, regarding which, the essentiality certificate was required to certify, may be set out thus :

“(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.

(e) The [Name of applicant _____] own and possesses Acres of land in _____ [Village/Tehsil/Taluka/District] on which nonagricultural use of land is permitted and a Medical College/Hospital can be established on it.

(f) The building plan of the Hospital and Medical college has been approved by the competent authority namely _____ designated by the State Government for such purposes on _____ (Copy of the approval is enclosed).

(g) The Hospital and Medical College have been granted Completion Certificate/Building Use Certificate by the competent authority, namely designated by the State Government for such purposes on (Copy of the certificate is enclosed).”

6. The petitioner had been issued an essentiality certificate, on 16th June, 2016, by the Government of Maharashtra. A copy thereof is on record, and a perusal of the said certificate reveals that it only certified as to criteria “A” to “D” as contained in form 2 to the 1999 Regulations. Indeed, the certificate could not have certified regarding criteria “E” to “G” (*supra*), as these criteria were noticed only by notification dated 31st January, 2017. As issued, and at the time it was issued, therefore, the essentiality certificate of the Government of Maharashtra, in favour of the petitioner institution was in order. In view of the introduction of criteria “E”, “F” and “G” (*supra*), in the format of the essentiality certificate, *vide* the notification dated 31st January, 2017, the petitioner wrote, to the Government of Maharashtra, on 18th September, 2017, thus :

“Saraswati Education Society
(P.T.R. No. MAH. 1377/2003/GBBSD)

Ref: SES/ MEDICAL EDUCATION-092-2017-18

Date : 18-9-2017

To,

The Secretary,
Medical Education & Drugs Department,
9th Floor, G.T. Hospital Compound,
Lokmanya Tilak Road,
Mumbai - 400 001.

Subject: Modification/ Addition in the Essentiality
Certificate

Sir,

We are thankful for the issuance of Essentiality Certificate (No. MED 2015/ CR-19/15/ Education-I, dated 16th June, 2016) for establishment of new medical college i.e. Dr. N. Y. Tasgaonkar Institute of Medical Science & Research Centre, Village Diksal, Bhivpuri Road Station, Tal. Karjat, Distt. Raigad 03 (Maharashtra) 410 201 by Saraswati Education Society, Mumbai.

As per the latest amendment by MEDICAL COUNCIL OF INDIA there are some additions to be made in the Essentiality Certificate to be submitted. After receipt of above mentioned Essentiality Certificate we had applied for academic year 2017-18; however due to certain technical reasons Saraswati Education Society had not received LETTER OF PERMISSION (LOP) and we have again applied for academic year 2018-19 within prescribed date and prescribed format. However as mentioned above Essentiality Certificate needs some addition from your end. Previously there were A, B, C 85 D points, now as per the new amendment revised Essentiality Certificate notified on 31-1-2017 in medical college regulation 1999 is as follows.

(e) The [Name of applicant_____] own and possess [Village/ Tehsil/ Taluka/ District on which non-agricultural used of land a Medical College/ Hospital can be established on it.

(f) The building plan of the Hospital and Medical College has been approved authority, namely, designate Government for such purposes on . (Copy of approval is enclosed).

(g) The Hospital and Medical College have been granted Completion Certificate Certified by the competent authority, namely, designated by the State such purposes on — (Copy of the Certificate is enclosed)

I therefore request you to please make necessary amendment/ addition in Essentiality Certificate issued to Saraswati Education Society for which following documents are attached herewith for your verification.

Perusal for addition of above mentioned subject matter.

Thanking you,

Yours faithfully.

Dr. N.Y. Tasgaonkar

Chairman

Saraswati Education Society”

7. It is not in dispute that, till date, a fresh essentiality certificate, containing criteria “E”, “F” and “G”, as introduced into the format of the essentiality certificate with effect from 31st January, 2017, has not been received by, and is not in the possession of, the petitioner. The petitioner has submitted that the application for issuance of a revised essentiality certificate, conforming to the amended Form 2 to the 1999 Regulations, is still under process with the Government of Maharashtra.

8. On 7th January, 2018, the petitioner submitted its scheme for establishment of a new medical college, for the academic year 2019-2020, for approval, to the Ministry, as required by Section 10A(i) (*supra*) of the IMC Act. It also addressed the following communication, to the Ministry, on 12th July, 2018 :

“Saraswati Education Society
(P.T.R. No. MAH. 1377/2003/GBBSD)

Date : 12/7/2018

To,

Mr. D.V.K. Rao
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi

Subject: Submission of Essentiality Certificate in the new format for the establishment of new medical college at Raigad, Maharashtra in the name and style of Dr. N.Y. Tasgaonkar Institute Medical Science and Research Centre, Raigad for the academic year 2019-20.

Ref.: Your email date 11 July, 2018

Sir,

As per the subject matter I would like to state that we already initiated process of amendment as per MCI new requirement of our essentiality certificate.

As per procedure. Government of Maharashtra and Director of Medical Education and Research (DMER) had already started the processing and assured us that the amendment into our existing essentiality certificate will be completed within 30-45 days.

I, therefore request you that please grant me a procedural time of 30-45 day for submission of said certificate.

Thanking You,

Your Anticipatory,
Dr. N.Y. Tasgaonkar
Chairman
Saraswati Education Society
Contact Number: 976982478”

9. Without entering into the correspondence that took place, between the petitioner and the Government of Maharashtra or the MCI in the interregnum, one may straightaway note that, on 3rd January, 2019, the MCI wrote to the petitioner, stating that the application of the petitioner had been considered by the Government of Maharashtra, and was found to be incomplete, as it did not contain clauses “(e)” to “(g)” in the essentiality certificate, as introduced with effect from 31st January, 2017. The petitioner was also invited to a hearing, to explain the situation, on 16th January, 2019, which was attended by the petitioner and on which occasion, the petitioner also submitted a written representation. In the said representation, the petitioner sought to submit that its application for permission to set up a new medical college had been considered for the two earlier academic years, i.e. 2017-2018 and 2018-2019 on the basis of the essentiality certificate dated 16th June, 2016 issued to the petitioner. The petitioner, therefore, expressed surprise at the fact that a revised essentiality certificate was being sought for the academic session 2019-2020.

10. *Vide* the impugned order dated 18th March, 2019, the MCI has rejected the petitioner’s application for establishment of a new medical college, for the academic session 2019-2020, for the reason that the essentiality certificate provided by it did not contain clauses “(e)”, “(f)” and “(g)” as noticed *vide* notification dated 31st January, 2017.

11. Aggrieved thereby, the petitioner has invoked the extraordinary jurisdiction of this Court, conferred by Article 226 of the Constitution of India.

12. I have heard Mr. Ashish Kumar, learned counsel for the petitioner and Mr. T. Singhdev, learned counsel for the MCI at considerable length. Mr. Ashish Kumar, appearing for the petitioner, submits that there was no justification for the respondent rejecting the petitioner's application, on the ground that the essentiality certificate, dated 16th June, 2016, provided by it, did not contain clauses "(e)", "(f)" and "(g)", as noticed in form 2 annexed to the 1999 Regulations with effect from 31st January, 2017. He has submitted that these details contained in the said clause "(e)" to "(g)" had been provided by his client to the MCI, albeit at the time of personal hearing granted by the MCI, and that, therefore, the MCI was resorting to a hyper-technicality in rejecting the petitioner's application only because these details were not entered in the essentiality certificate. He highlights the fact that obtaining a revised essentiality certificate, was not within the control of his client, and that his client had acted *bonafide*, as it had applied for a revised essentiality certificate as far back as on 18th September, 2017. In these circumstances, he submits, the impugned order, rejecting the petitioner's application for establishing a new medical college solely on the ground that the essentiality certificate did not conform to the format provided in the annexure to the 1999 Regulations, could not sustain on facts or in law.

13. Additionally, Mr. Ashish Kumar submits that, on the basis of the said essentially certificate, the petitioner's premises had been inspected in 2017-2018 and 2018-2019, and there was no reason why the same procedure could not be followed in the present academic session.

14. Arguing in opposition, Mr. Singhdev, learned counsel appearing for the MCI submits that there could be no relaxation from the condition of supplying a proper essentiality certificate, which was the mandate of Regulation 2 and 3 of the 1999 Regulations. Apropos the inspection of the petitioner's premises during the 2017-2018 academic session, Mr. Singhdev submits that the, last date for filling applications, for the said session was in July, 2016. The amendment to Form 2, annexed to the 1999 Regulations, was on 31st January, 2017, which was much after the last date for submitting applications for the said academic session. In this scenario, Mr. Singhdev submits that a decision was taken, on a pan-India basis, not to insist on the newly incorporated conditions “(e)” to “(g)”, in the form of the essentiality certificate, for the academic session 2017-2018, and that the said decision was applied while examining cases of colleges across the country, which included the petitioner.

15. Insofar as the inspection of the petitioner's college for the academic session 2018-2019 was concerned, Mr. Singhdev submits that this exercise was undertaken pursuant to an order, dated 18th September, 2017, issued by the Supreme Court in W.P.(C) 862/2017,

filed by the petitioner before the Supreme Court. The said order may be reproduced, *in extenso*, thus :

“Having heard learned counsel for the parties, it is directed that the Medical Council of India shall send a team for inspection within three months as per the schedule for the academic year 2019-2019. The application filed by the institution for the academic year 2017-2018 shall be treated as an application for the academic year 2018-2019. The deficiencies noted by the Inspection Committee shall be brought to the notice of the institute, and it shall be granted liberty to remove the deficiencies. Thereafter, the matter shall be placed before the Hearing Committee, if required, after removal of deficiencies, and if any deficiency is still required to be removed, the same shall be removed by the institution, and if the institution is a compliant institution, it shall get the Letter of Permission for the relevant academic year i.e. 2018-2019.

Needless to say that we have passed this order without quashing the orders dated 30.05.2017 and 30.08.2017 but that does not necessarily mean that the Union of India or the Medical Council of India shall place reliance on the same.

The writ petition stands disposed of in the above terms. No order as to costs.”

16. It was in this scenario, Mr. Singhdev submits, that the MCI inspected the petitioner’s premises, even though it was in possession only of the essentiality certificate of 16th June, 2016. Mr. Singhdev submits that these facts have been concealed in the writ petition. He submits that ultimately, after inspecting the petitioner’s premises the

MCI after inspecting the petitioner's premises, the prayer for grant of permission was rejected even for the academic session 2018-2019.

17. Mr. Singhdev also points out that the essentiality certificate dated 16th June, 2016, was valid only for a period of three years which, expire in June, 2019. He submits that it is not possible for a medical institution or college to function without an essentiality certificate and that allowing the petitioner the permission to function for the academic session 2019-2020 would be futile, inasmuch as, after 16th June, 2019, it would not in possession of any essentiality certificate, though Mr. Ashish Kumar had sought to submit that the renewal of the essentiality certificate was still in progress.

18. Having heard learned counsel and perused the record, it is an admitted position that the essentiality certificate submitted by the petitioner, was not in accordance with the format thereof as amended with effect from 31st January, 2017. The submission, of Mr. Ashish Kumar, to the effect that the details contained in newly introduced clauses “(e)” to “(g)” of the said essentiality certificate had separately been made available to the MCI by the petitioner, does not pass muster, as the requirement of the regulations was that these details had to form part of the essentiality certificate, as certified by the authority issuing the essentiality certificate. This Court has to be mindful of the fact that these are requirement which have been stipulated for setting up of medical colleges, and there can be no relaxation, whatsoever from the regirs thereof. It would be completely out of the bonds of this Court to hazard an opinion that the providing of the details

contemplated by the newly added clauses “(e)”, “(f)” and “(g)” in the format of the essentiality certificate as contained in format annexed to the 1999 Regulations would be sufficient, and that an essentiality certificate, incorporating the said details and certified by the authority issuing the essentiality certificate, would not be required in such circumstances. In cases such as this, the jurisdiction of the Court is essentially limited to ascertaining whether the application of the person wanting to set up the educational institution was in conformity with the requirements of the Act/Rule/Regulation applicable in that regard. If it was not in conformity therewith, this Court cannot, in exercise of the jurisdiction, vested in it by Article 226 of the constitution of India, dilute the rigor of the regulations, or treat any part thereof as being merely procedural or directory. In matters relating to medical institutions, a much more circumspect approach, than would normally be required to be exhibited by the Court, is warranted.

19. The submission, of Mr. Ashish Kumar, to the effect that that on the basis of the essentiality certificate dated 16th June, 2016 the petitioner’s premises had been inspected by the MCI in 2017-2018 and 2018-2019, too, fails to impress in view of the response thereto, by Mr. Singhdev. Mr. Singhdev has clearly explained how, for the academic session, 2017-2018, a decision was taken, on a pan India basis, not to require the essentiality certificate to conform to the amended format as introduced with effect from 31st January, 2017, as the last date for submitting of the application, for the said academic session, was in July, 2016. Insofar as the academic session, 2017-

2018 was concerned, Mr. Singhdev points out that the processing of the petitioner's application, even on the basis of the essentiality certificate dated 16th June, 2016 was only because there was a mandamus, by the Supreme Court to process the case of the petitioner for the academic session 2018-2019, and, therefore, the MCI did it appropriate not to take up the issue of the essentiality certificate not being in accordance with the amended format. Even so Mr. Singhdev would seek to point out, the permission, for the academic session 2018-2019, was, in fact, rejected consequent to inspection.

20. There is also substance, in the third submission, of Mr. Singhdev, to the effect that the essentiality certificate presently in possession of the petitioner, dated 16th June, 2016 would expire, at the end of three years from the date of its issuance i.e. in June, 2019 and that, therefore, allowing the petitioner to function for the academic session 2019-2020, would amount to allowing it to do so without an essentiality certificate, after the expiry of the essentiality certificate presently in its possession on 16th June, 2019. Mr. Singhdev points out that it is not possible for a medical institution to function without an essentiality certificate. Though Mr. Ashish Kumar would seek to submit that there was every possibility of a revised fresh essentiality certificate being issued, the fact of the matter is that, despite the application for this purpose, having been submitted nearly two years back in September, 2017, no revised essentiality certificate has been issued till date. The date by which a revised essentiality certificate, would, if at all, been made available by the Government of Maharashtra, is therefore, an imponderable and, while allowing

permission to medical institutions to be set up and function, the MCI cannot be expected to proceed on imponderables and hypothesis.

21. Mr. Singhdev also relies on the judgment of the Supreme Court in *V.N. Medical Council of India v. V.N. Public Health and Educational Trust, (2016) 11 SCC 216*. The reliance is apt, as, in the said case, too, the Supreme Court held that an essentiality certificate, which was defective, was “not an essentiality certificate in law”. Though Mr. Ashish Kumar would submit that the said judgment is clearly distinguishable, inasmuch as the certification, by the State Government, in the essentiality certificate, in the said case, was found, by the Supreme Court, to be contrary to the stipulation contained in the applicable clause, inasmuch as it contemplated the institution becoming compliant *in futuro* rather than *in praesenti*, the applicability of the ratio of the said decision is not dependent on the perceived defect in the essentiality certificate. The essentiality certificate being one of the necessary documents, to enable a medical institution to function, it has to be strictly compliant with the statutory prescription stipulated therefor. Absolute, rather than substantial, compliance, is the norm in such cases, and this Court is loath to dilute the norm.

22. In any event, in view of the above discussion, I am of the opinion that, that the Medical Council of India cannot be faulted in any manner, in refusing to grant permission, to the petitioner, to set up the medical institution, the format of the essentiality certificate

provided by it, was not in conformity with the form annexed to the 1999 Regulations.

23. In view thereof, the writ petition is dismissed with no order as to costs.

MAY 27, 2019/kr

C. HARI SHANKAR, J

