IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 15TH DAY OF DECEMBER 2020 / 24TH AGRAHAYANA, 1942

W.P.(C)No.26397 OF 2020(Y)

PETITIONER:

**V.N.PUBLIC HEALTH AND EDUCATIONAL TRUST
A2, JAWAHAR NAGAR COLONY, SALES TAX OFFICE ROAD, KOZHIKODE, REPRESENTED BY ITS MANAGING TRUSTEE - V. ANIL KUMAR**

**BY ADVS.
SRI.S.VINOD BHAT
KUM.ANAGHA LAKSHMY RAMAN**

RESPONDENTS:

1 **KERALA UNIVERSITY OF HEALTH SCIENCES
THRISSUR - 680 596, REPRESENTED BY ITS REGISTRAR.**

2 **NATIONAL MEDICAL COMMISSIONER
DWARAKA, NEW DELHI - 110 077, REPRESENTED BY ITS CHAIRMAN.**

3 **UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAN BHAVAN, NEAR UDYOG BHAVAN METRO STATION, MOULANA AZAD ROAD, NEW DELHI - 110 011.**

**R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASGI OF INDIA
R1 BY SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH SCIENCES
R2 BY ADV. SRI.TITUS MANI
SRI M.A.ASIF- SPL GOVERNMENT PLEADER**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.12.2020, ALONG WITH WP(C).26777/2020(V), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

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BY ADVS.
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RESPONDENTS:

1. **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. **NATIONAL MEDICAL COMMISSION, DWARAKA,**
NEW DELHI-110077, REPRESENTED BY ITS CHAIRMAN.

3. **MEDICAL ASSESSMENT AND RATING BOARD,**
DWARAKA, NEW DELHI-110077, REPRESENTED BY ITS PRESIDENT.

4. **UNION OF INDIA,**
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAN BHAVAN, NEAR UDYOG BHAVAN METRO STATION, MOULANA AZAD ROAD, NEW DELHI-110011.
R2-3 BY ADV. SRI.TITUS MANI, SC
BY ADV.P.VIJAYAKUMAR, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.12.2020, ALONG WITH WP(C).26397/2020(Y), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

Since common issues are raised, these writ petitions are heard together and are being disposed of by this common judgment.

2. W.P.(C)No.26397 of 2020:- The petitioner, namely, V.N. Public Health and Educational Trust, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P9 order dated 23.11.2020 of the 1st respondent Kerala University of Health Sciences, whereby the application made by the petitioner for consent of affiliation for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22, stands rejected for the reasons stated therein. The petitioner has also sought for a writ of mandamus commanding the 1st respondent University to issue consent of affiliation, in proper format, and communicate the same to the 2nd respondent National Medical Commission and also the 3rd respondent Central Government, forthwith, at any rate, before 15.12.2020.

2.1. The petitioner had earlier approached this Court in W.P.(C) No.27266 of 2019 challenging the order passed by the

State Government rejecting the application for essentiality certificate for starting a medical college with an intake of 150 seats for MBBS, for the academic year 2020-21, and W.P.(C)No.29098 of 2029 challenging the order passed by the 1st respondent Kerala University of Health Sciences rejecting the application for consent of affiliation for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2020-21. The petitioner has also filed W.P.(C)No.34275 of 2019 seeking an order directing the Central Government and the Medical Council of India to process the application seeking permission to establish a new medical college with an intake of 150 seats for MBBS, for the academic year 2020-21. By Ext.P2 judgment dated 12.10.2020, this Court allowed W.P.(C)No.27266 of 2019 and dismissed W.P.(C)Nos.29098 of 2019 and 34275 of 2019. Paragraph 39 of the said judgment reads thus;

> "39. In the circumstances, this Court is of the considered opinion that these writ petitions have to be disposed of with appropriate orders/directions, in the facts of the case. The writ petitions are accordingly disposed of with the following directions:-
>
> (1) W.P.(C)No.27266 of 2019 is allowed to the extent of setting aside Ext.P6.

(2) W.P.(C)Nos.29098 of 2019 and 34275 of 2019 are dismissed.

(3) In the event of petitioner submitting application for essentially certificate for the year 2022-23 for starting Medical College, the 1st respondent-State of Kerala in W.P.(C) No.27266 of 2019 shall consider the said application on merits taking into consideration the findings and observations made hereinabove, and pass orders thereon within a period of one month from the date of receipt of the application.

(4) If the petitioner makes a request to the 2nd respondent-University in W.P.(C)No.29098 of 2019 for issuance of Consent of Affiliation, the 2nd respondent shall permit the petitioner to make formal application by opening its portal for a period of five days with intimation to the petitioner, without insisting upon essentially certificate from the 1st respondent and shall take a decision thereon within three months."

2.2. Seeking review of the judgment dated 12.10.2020 in W.P.(C)Nos.27266 of 2019 and 29098 of 2019, the petitioner filed R.P.Nos.773 of 2020 and 777 of 2020. Those review petitions were dismissed by Ext.P3 order dated 20.10.2020. In the said order, this Court made it clear that the judgment in W.P.(C)Nos.27266 of 2019 and 29098 of 2019 will not be an impediment to the

petitioner to apply for and obtain permission for starting the medical college during the academic year 2021-22 itself, if the petitioner is otherwise eligible.

2.3. Challenging Ext.P2 judgment and Ext.P3 order, the petitioner filed W.A.Nos.1401 of 2020 and 1413 of 2020. On 30.10.2020, the Division Bench passed an interim order directing the learned Senior Government Pleader and the learned Standing Counsel for the University to get instructions on the aspect of essentiality certificate and consent of affiliation, for the academic year 2021-22, on account of the extension of time granted by the Medical Council of India. Those writ appeals were disposed of by Ext.P1 judgment dated 03.11.2020 modifying Ext.P2 judgment to the extent indicated therein, for consideration of the request for establishment of the medical college, for the academic year 2021-22. Paragraphs 16 to 22 of the said decision read thus;

> "16. Having regard to the submission of Mr.Surin George Ipe, learned Senior Government Pleader and taking note of the last date, i.e., 30.11.2020 fixed by MCI for entertaining an application for establishment of new Medical Colleges for the academic year 2021-22, we permit the appellant in Writ Appeal No.1401 of 2020 to submit the documents stated supra to the Government, as expeditiously as possible.

17. Government is also directed to scrutinise the application, cause inspection of the proposed Medical College, if required and thereafter intimate the proposed Medical College, the defects, if any, to be rectified. The said exercise should be done within two weeks from today. On receipt of the communication from the Government, it is open to the proposed Medical College to submit all the documents required for the purpose of grant of Essentiality Certificate. That should be done within one week.

18. Thereafter, the Government is directed to send appropriate communication to the Medical Council of India for consideration of the application submitted by the proposed Medical College.

19. In so far as Kerala University of Health & Allied Sciences (KUHAS) is concerned, no sooner the online application along with documents/hard copy of the application for grant of affiliation is received, the University shall scrutinize the application and intimate the proposed college, if there is any defect. Appellant college is permitted to rectify the defects, if any, noticed during the stage of scrutiny.

20. University is directed to cause inspection of the college and also to consider the factors for Consent of Affiliation and accordingly, communicate its decision to the Medical Council of India.

21. The abovesaid exercise should be completed before 23.11.2020. To avoid multiplicity of inspection and to save time, it is desirous to have a joint inspection by the Government and University. The abovesaid directions and time schedule are issued to ensure that the exercise

undertaken should not be futile.

22. The judgment impugned, is modified to the extent of consideration, for establishment of Medical College for the academic year 2021-22."

2.4. Pursuant to the direction contained in Ext.P1 judgment, the 1st respondent University considered the application made by the petitioner for consent of affiliation for starting a new medical college, for the academic year 2021-22. The inspection commission appointed by the University submitted a report dated 09.11.2020, which was placed before the Scrutiny Committee in its meeting held on 20.11.2020. The Scrutiny Committee, vide minutes dated 20.11.2020, pointed out the following deficiencies;

"I. Infrastructure:-

Construction of the building is not completed. Needs thorough refinement to start a medical college.

II. Equipment:-

Needs refined equipment in Theatre, Laundry, Labs, Histopathology and Radiology.

Blood Bank- Nil

Practical Laboratories – Available 1 (required 3)

Journals – Nil

ICU/ICCU/PICU/NICU/SICU/Obstetric ICU/ICU – Available 18 beds (required-60 beds)

X-Ray Mobile Unit – Available 1 (required 2)

No in house facilities are available in Pathology and Microbiology Lab and most requirements are outsourced for Microbiology and Pathology Laboratories.

III. Clinical Material:-

As per records, there is no fully functioning hospital since 2 years. Records shows hospital started functioning only from 2019. On the day of inspection, Bed occupancy is 30% only. OPD required is 600 and there is only less than 200 attendance on the day of inspection.

IV. Faculty deficiency:-

1. Professor -**1** - (Dept. of Biochemistry);

2. Associate Professor -**8** - (Anatomy-1, Physiology-1, Pharmacology-1, Pathology-1, General Medicine-1, Orthopaedics-1, Anaesthesia-1, Radiodiagnosis-1);

3. Assistant Professor -**11 -** (Anatomy-2, Physiology-3, Forensic Medicine-1, Community Medicine-1, General Medicine-1, Respiratory Medicine-1, OBG-1, Anasthesiology-1);

4. Tutor/Demonstrator/SR - **29** - (Anatomy-4, Physilogy-2, Biochemistry-4, Pathology-1, Microbilogy-1, Forensic Medicine-1, General Medicine-3, Paediatrics-1, Pulmonary Medicine-1, DVL-1, Psychiatry-1, General Surgery-3, ENT-1, OBG-2, Anasthesia-1, Radiodiagnosis-1, Dentistry-1).”

2.5. The deficiencies noted by the Scrutiny Committee was

notified to the petitioner vide Ext.P7 communication dated 20.11.2020, whereby the petitioner was directed to submit remarks, if any, on or before 23.11.2020. On receipt of Ext.P7, the petitioner submitted Ext.P8 remarks dated 23.11.2020. The clarification/compliance in Ext.P8 remarks submitted by the petitioner on the deficiencies pointed out in Ext.P7, is extracted hereunder;

Deficiencies pointed out	**Clarification/Compliance made**
1. **<u>Infrastructure</u>** • Construction not completed, needs thorough refinement to start a medical college	All the buildings are constructed as per requirement for 150 MBBS seats and construction was completed 10 years ago. It is true that sanction for the college could not be materialized for the reasons not attributable to us. There was some delay in carrying out the maintenance work of the buildings which we are now been carried out on a war foot basis. The occupancy certificate issued by Puthusseri Panchayat is forwarded herewith as proof of the completion of the buildings as stated. (Annexure-1). The copy of the form-5 issued by the District Collector is also forwarded to show that all mandatory clearances are in place in respect of our buildings and hospital. (Annexure-2).

2. **<u>Equipments</u>** • Need refined equipments in theatre, Laundry, Labs, Histopathology and Radiology	All the required equipments as per the requirement at the stage of LoP were purchased and maintained. Some of the equipments have become out of order as were not put in use due to the non sanctioning of the college. However there are sufficient equipments required at the stage of the grant of consent of affiliation at our hospital even now. We are conducting all the complicated surgeries including total knee replacement, hip replacement, Laparoscopic surgeries, gastro surgeries in our operation theatre. The proof of approval of the insurance claims of some of such surgeries by the State insurance agency (KASP) is forwarded for your kind reference. (Annexure-3). As far as Radiology department is concerned there are two high end ultrasound machines and one CT machine, 2 X ray units of 300 MA, the copy of the approvals of which by the radiation safety authority is forwarded herewith. (Annexure-4) We undertake to replace the old equipments with the new ones before Medical Council of India conducts its inspection for grant of letter of permission.
• Blood Bank-Nil	Our blood bank is fully equipped. The application for grant of permission for the blood bank has already been submitted before the Kerala State Blood Transfusion Council and it is under process. In the meantime, we have entered in to a memorandum of understanding with Palakkad Blood Bank which is a licensed blood bank with component separation

	for the supply of the blood components to our hospital till we get the license for the blood bank. Copy of the MOU with the blood bank is attached herewith. (Annexure-5)
• Practical laboratories-1 (required -3)	The practical laboratories for catering to the current level of patient strength is maintained and it is undertaken to equip fully before the inspection for letter of permission is conducted by NMC.
• Journals – Nil	No current journals are procured as the college is not in existence. However, it is undertaken to subscribe to all the journals as per NMC regulations before their inspections for LoP is conducted.
• ICU/ICCU/PICU/SICU/ obstetrics-ICU/ICU-18 beds (required-60 beds)	All the ICUs are maintained as per the regulations of erstwhile MCI. However we undertake to increase the bed strength in the mentioned ICUs following the norms of NMC before the Inspection for LoP is conducted.
• X ray Mobile Unit-1 (required-2)	There are two X ray units each of 300MA and one X ray mobile unit. We undertake to purchase one more mobile X ray unit before the NMC inspection.
• No in house facilities are available in Pathology and Microbiology lab and most requirements are out sourced for Microbiology and Pathology Laboratories.	In house facilities are available both for Microbiology and pathology under the able guidance of Dr.Pushpalatha, MD Microbiology, Asso.Prof of Microbiology and Dr.Ashna Soman, MD Pathology, Senior resident in pathology. Both the above faculties of Microbiology and Pathology were counted by the inspectors of the University during

	their inspection. More facilities are being added as we propose to start cancer surgeries and also to meet all the requirements of NMC before their inspections.
3. **<u>Clinical Material</u>** • As per records, there is no fully functioning hospital since two years. Records shows hospital starts functioning from 2019. On the day of inspection, bed occupancy is 30% only. OPD required is 600 and there is only less than 200 attendance of the day of inspection.	Out hospital has been functioning since 2008 in a fledged manner and this is certified by the State Government in all the 6 essentiality certificates issued since 2008 after due inspections. Copies of all the 6 essentiality certificates issued by the State government is attached herewith (Annexure-6) it is also pertinent to note that the Health University has issued Consent of affiliation in 2011 and 2015 after conducting due inspection. Copy of certificate form the Panchayat show existence of our hospital which was obtained for production before MCI/NMC is also attached as an evidence. (Annexure-7). Ours is the only major hospital in Palakkad District conducting the state insurance scheme for the BPL patients successfully. The short fall in the number of patients is only due to the ongoing covid 19 pandemic. Here also we undertake to make good the lapses and to have sufficient clinical materials before NMC conducts their inspections.

4. **<u>Faculty Deficiencies</u>** • One Professor in the department of Biochemistry • Associate Professor-8 (Anatomy-1, Physiology-1, Pharmacology-1, Pathology-1, General Medicine-1, Orthopaedics-1, Anaesthesia-1, Radiodiagnosis-1) • Assistant Professor-11 (Anatomy-2, Physiology-3, Forensic Medicine-1, Community Medicine-1, General Medicine-1, Respiratory Medicine-1, OBG-1, Anaesthesia-1). • Tutor/Demonstrator/SR-29 (Anatomy-4, Physiology-2, Biochemistry-4, Pathology-1, Microbiology-1 Foresnsic Medicine-1, General Medicine-3, Paediatrics 1, Pulmonary Medicine-1, DVL-1, Psychiatry-1, General Surgery-3, ENT-1, OBG-2, Anaesthesia-1, Radiodiagnosis-1, Dentistry-1)	It is only few doctors required to conduct a 300 bedded hospital which can be developed to a teaching hospital and skelton faculties in the college departments which are required at the stage of the inspection for letter of intent as per the norms of the erstwhile MCI which also is expected to be followed by the newly formed NMC. As your are aware the inspection for letter of intent is the first assessment to be carried out by the NMC after the application is received in order with the consent of affiliation the University and such other documents. Hence it goes without saying that university is not expected to have a requirement more than that of the letter of intent at the stage of issuance of consent of affiliation which is a prerequisite for the LOI inspection. The university stipulations for the consent of affiliation for starting of a medical college is understood to be much less than that of the LOI requirements. The faculty members and residents who are already been shown during the inspection of the University therefore may kindly be considered for the grant of consent of affiliation at this stage. Advertisements were carried out on a national basis in Times of India, Hind and Malayala Manoramma recently spending lakhs of rupees for recruiting the faculties under the hope that at least we would be able to

	present for NMC inspections in the forthcoming sessions. The copies of such advertisements are attached herewith. (Annexure-8) We also undertake to recruit all the faculties as per the norms of the newly formed NMC before they conduct inspections. A letter of appreciation form Indian Academy of Paediatrics for our institution as a participating institution for the Clinical Data Registry for Paediatric COVID -19 pandemic in India is attached herewith for your kind information. (Annexure-9)

2.6. After considering Ext.P8 remarks, the 1st respondent University issued Ext.P9 order dated 23.11.2020, whereby the request made by the petitioner for consent of affiliation for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22, stands rejected for the reasons stated therein. It is stated in Ext.P9 order that, based on the report of the Scrutiny Committee the deficiencies in infrastructure, equipment, clinical materials and faculties were notified to the petitioner, vide Ext.P7. Regarding infrastructure it was noticed that the construction of the building is not completed. Regarding equipment it was noticed that the hospital needs refined equipment in Theatre, Laundry, Labs, Histopathology and

Radiology. There is no Blood Bank. There is no sufficient number of Practical Laboratories and mobile X-Ray Unit. There are no journals. Available beds in ICU/ICCU/PICU/NICU/SICU/Obstetric ICU/ICU is only 18, as against the requirement of 60 beds. No in-house facilities are available in Pathology and Microbiology Lab and most of the requirements are outsourced. Regarding clinical materials it was noticed that hospital is functioning only from 2019 onwards. On the day of inspection, the bed occupancy was only 30%. Out patients required is 600 and the attendance on the day of inspection was only less than 200. Regarding faculty deficiency it was noticed that the total faculty deficiency is 32% and Tutor/ Demonstrator/SR deficiency is 78%. The deficiencies noted above could not be rectified in a short time. The petitioner has not raised any objection in Ext.P8 remarks regarding the inspection conducted by the University. Therefore, considering the gross deficiencies noted in the report of the Scrutiny Committee, which is still existing, it was decided, based on the recommendation of the Scrutiny Committee, not to grant consent of affiliation to the petitioner for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22. Feeling

aggrieved by Ext.P9, the petitioner is before this Court in this writ petition.

2.7. A statement has been filed on behalf of the 1st respondent University, through the learned Standing Counsel, opposing the reliefs sought for in this writ petition. Along with I.A.No.1 of 2020, the petitioner has placed on record certain additional documents.

3. W.P.(C)No.26777 of 2020:- The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P10 order dated 21.11.2020 of the 1st respondent State, whereby the application made by the petitioner for essentiality certificate for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22, stands rejected for the reasons stated therein. The petitioner has also sought for a writ of mandamus commanding the 1st respondent State to issue essentiality certificate to the petitioner for starting a new medical college during the academic year 2021-22, on or before 15.12.2020.

3.1. On 03.12.2020, when this writ petition came up for admission, this Court admitted the matter on file. The learned

Government Pleader took notice for the 1st respondent. The learned Standing Counsel for National Medical Commission took notice for respondents 2 and 3 and the learned Assistant Solicitor General of India took notice for the 4th respondent.

3.2. Ext.P10 order of the 1st respondent is one issued pursuant to the direction contained in Ext.P9 judgment of the Division Bench of this Court in W.A.Nos.1401 of 2020 and 1413 of 2020. In connection with the request made by the petitioner for essentiality certificate for starting a new medical college, the Director of Medical Education constituted an inspection team, which conducted inspection and submitted a report. After taking into consideration the report of the inspection team, the 1st respondent decided in Ext.P10 order that the petitioner is not entitled for essentiality certificate for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22. The reasoning of the 1st respondent in Ext.P10 order reads thus;

> "As per the Hon'ble Court direction, Government directed the University and the Director of Medical Education to conduct a joint inspection at the proposed medical college and submit a report to Government. Accordingly the Director of Medical Education as per letter read above has submitted the

inspection report which is as follows;

1. Construction not completed and even the space for accommodating para clinical departments (Pharmacology, Pathology, Microbiology, Community Medicine forensic Medicine) are not available.

2. Only basic equipments are available in the hospital, even essential facilities and equipments in Central Sterile Supply Department, Blood Bank are not fully equipped.

3. Available clinical material on the day of inspection is grossly inadequate.

4. Faculty position is grossly inadequate.

5. The hospital is functional for last one year only as per the hospital statistics given.

In this connection, DME has also reported that it will be difficult to start the Medical College in the coming academic year (2021-22) as the minimum requirements stipulated by National Medical Commission for issuing Letter of Permission is not at all fulfilled. The medical College and collegiate hospital attached to the college require lot of further development.

Government have examined the matter in detail. In a recent issue the Madhya Pradesh Government repealed the Essentiality Certificate provided to Gyanjeet Sewa Mission Trust for starting a medical college in Jabalpur. This was disputed before the Madhya Pradesh High Court which backed the Government's order noting that it has given consideration to the fraud done by the college in seeking the Essentiality Certificate, the incompetency of the trust to furnish the minimum benchmarks of infrastructure and other

facilities as provided by the Medical Council of India (MCI) for running of a medical college along with total loss of substratum and larger public interest, as reasons for cancellation of Essentiality Certificate.

The present Inspection report highlights the grossly inadequate clinical materials and also points out the fact that the hospital is functional for the last one year only as per the hospital statistics given. It may be noted that the Honourable High Court had ordered the closure of two medical colleges in the state recently due to lack of clinical materials. So if the Essentiality Certificate is issued based on the inspection report it will adversely affect the future of the students. In addition to that the DME has categorically stated that the Collegiate hospital attached to the proposed College requires lot of further development. By considering these facts, the application read above, seeking Essentiality Certificate to establish new Medical College at Walayar in Palakkad District by V.N.Public Health and Educational Trust, Calicut deserves no merit for consideration and is summarily rejected."

3.3. A statement has been filed on behalf of the 1st respondent State, opposing the reliefs sought for in this writ petition. Along with the statement, Annexure I inspection report dated 17.11.2020 and Annexure II photographs taken at the time of inspection are placed on record. The cardinal deficiencies noted in that report reads thus;

"**Cardinal Deficiencies**

1. **Infrastructure**

Construction is going on. Needs development and refinement to start a new Medical College. Presently no space available for paraclinical departments like Pharmacology, Pathology, microbiology, Community Medicine and Forensic Medicine.

2. **Equipments**

Basic requirements are there in hospital building. Need purchase of equipments in areas like CSSD, blood bank, preclinical and paraclinical laboratories.

3. **Clinical Material**

Inadequate in most of the departments considering teaching purpose. Many inpatients in departments like Medicine, Surgery, Paediatrics and OBG did not seem to have genuine problems on the day of inspection.

4. **Faculty and Residents** (Separately) – Attached

Deficient as per the descriptions and the percentage is as follows;

Faculty Position	*Requirement	Actual	Deficiency
Professor	6	9	1
Associate Professor	17	7	8
Assistant Professor	31	16	16
Tutor	17	6	11
Epidemiologist-cum-Asst.Prof.	0	0	0
Statistician-cum-Tutor	0	0	0
Sr.Resident	26	3	23
Jr.Resident	0	9	0
Total	97	50	59

5. **Academic training** – Not yet started

Any other matter – Infrastructure, staff availability and clinical material has to be improved before starting a new Medical College. Even though statistics of last 3 years is asked for data like birth and death, IP and OP; data for the last 1 year only is available."

4. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the State, the learned Standing Counsel for National Medical Commission, the learned Standing Counsel for Kerala University of Health Sciences and also the learned ASGI for Central Government.

5. The orders which are impugned in these writ petitions are Ext.P9 order dated 23.11.2020 in W.P.(C) No.26397 of 2020 of the respondent University, whereby the application made by the petitioner for consent of affiliation for starting a new medical college stands rejected for the reason stated therein; and Ext.P10 order dated 21.11.2020 in W.P.(C) No.26777 of 2020 issued by the respondent State, whereby the application made by the petitioner for essentiality certificate for starting a new medical college stands rejected for the reasons stated therein.

6. The learned counsel for the petitioner would contend that, after issuing Exts.P2 to P7 essentiality certificate of the year

2004, 2009, 2011, 2014, 2015, produced along with W.P.(C) No.26777 of 2020, and Exts.P14 and P15 consent of affiliation of the year 2011 and 2015, produced along with W.P.(C) No.26397 of 2020, the State/University cannot reject the request made by the petitioner for essentiality certificate/consent of affiliation for the academic year 2021-22.

7. The rejection of the request for consent of affiliation by the respondent University is based on the deficiencies pointed out in the minutes of the Scrutiny Committee on the report of the inspection commission dated 09.11.2020. On the other hand, the rejection of the request for essentiality certificate by the respondent State is based on the deficiencies pointed out in the report of the inspection team constituted by the Director of Medical Education, which is placed on record as Annexure I, along with the statement filed on behalf of the respondent State in W.P.(C) No.26777 of 2020. The deficiencies noted in the minutes of the Scrutiny Committee, which are extracted hereinbefore at paragraph 2.3 and the deficiencies noted in Annexure I report of the inspection team constituted by the Director of Medical Education, which are extracted hereinbefore at paragraph 3.3, are

serious in nature. In both the reports deficiencies noted are in relation to infrastructure, equipment, clinical materials and faculties.

8. In **Medical Council of India v. The Principal, KMCT Medical College [(2018) 9 SCC 766]** it was contended before the Apex Court that the inspection was not properly conducted. Repelling the said contention, the Apex Court held as follows;

> "15. We do not deem it necessary to deal with the submission made on behalf of the College regarding the inspection not being properly conducted. This Court has repeatedly said that a decision taken by the Union of India on the basis of a recommendation of an expert body regarding the inadequacy of facilities in medical colleges cannot be interfered with lightly. Interference is permissible only when the colleges demonstrate jurisdictional errors, ex facie perversity or mala fide. [See: **Manohar Lal Sharma v. Medical Council of India (2013) 10 SCC 60** and **Medical Council of India v. Kalinga Institute of Medical Sciences (2016) 11 SCC 530**]. As no case is made out by the College for interference with the inspection report, we decline the request of Mr.Sibal for remand of the matter to the High Court."

9. The remarks submitted by the petitioner to the deficiencies pointed out in Ext.P7 communication dated 20.11.2020 in W.P.(C)No.26397 of 2020 is extracted hereinbefore at paragraph

2.3. The clarifications/compliance furnished in Ext.P8 remarks would show that the petitioner's institution, which proposes to establish a medical college, with an annual intake of 150 seats for MBBS, is lacking necessary infrastructure, equipment, clinical materials and faculties. As noticed in Ext.P9 order dated 23.11.2020 in W.P.(C)No.26397 of 2020, in Ext.P8 remarks submitted to the deficiencies pointed out in Ext.P7, the petitioner has not raised any objection regarding the inspection conducted by the University. The deficiencies in the number of practical laboratories, mobile X-ray unit, available beds in ICU, etc., are not disputed in Ext.P8 remarks. Admittedly the petitioner is yet to purchase any journal for the proposed medical college. The bed occupancy was only 30% on the day of inspection and the number of out patients was less than 200, as against the requirement of 600. The total faculty deficiency noted in Ext.P9 is 32% and Tutor/Demonstrator/SR deficiency is 78%. Such deficiencies in clinical materials, faculties, etc., are also noted in Annexure I inspection report prepared by the inspection team deputed by the Director of Medical Education, on the request made by the petitioner for essentiality certificate.

10. As per Annexure I inspection report prepared by the inspection team deputed by the Director of Medical Education, bed occupancy in the hospital was only 30%, out of which patients with genuine problems seems to be only 20% in Surgery, Pediatrics and Obstetrics and Gynaecology (OBG). Bed occupancy in ICU was only 3 and that in casualty was only 1. The average number of cases operated is 2 major and 2 minor surgeries per month, as per the records submitted by the Dean. As per hospital records there are 34 child births from 12.03.2020 to 06.11.2020, out of which birth certificate issued by the Panchayat is available only for 9 child births. The hospital is having no blood bank and it is outsourced from external blood bank. On account of various deficiencies noted in Annexure I, the respondent State by Ext.P10 order dated 21.11.2020 in W.P.(C) No.26777 of 2020 rejected the request made by the petitioner for essentiality certificate for starting a new medical college.

11. The deficiencies noted in Annexure I report of the inspection team constituted by the Director of Medical Education, on the request made by the petitioner for essentiality certificate, and that noted by the Scrutiny Committee of the University (based

on the report of the inspection commission), on the request made by the petitioner for consent of affiliation, cannot be interfered with lightly. Any interference on the findings of the respondent State/ University regarding inadequacy in infrastructure, equipment, clinical materials and faculties in the proposed medical college, which are based on the inspection report of the experts in the field, is legally permissible under Article 226 of the Constitution of India, only when the petitioner demonstrates jurisdictional errors, ex facie perversity or mala fide. In the instant case, in the absence of any vitiating circumstances, no interference is warranted on the findings in the orders impugned in the respective writ petitions as to inadequacy in infrastructure, equipment, clinical materials and faculties in the proposed medical college.

12. In **Medical Council of India v. State of Karnataka [(1998) 6 SCC 131]**, while dealing with the admission made in excess of intake capacity fixed by the Council, the Apex Court held that, a medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a

medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they do not have full facilities of teaching and were not exposed to patients and their ailments during the course of their study.

13. In **K.S. Bhoir v. State of Maharashtra [(2001) 10 SCC 264]** the Apex Court held that sub-section (1) of Section 10A of the Indian Medical Council Act, 1956 is a substantive provision in itself and begins with non obstante clause 'notwithstanding anything contained in the Act', it means there is a prohibition in the matter of an increase in the admission capacity in a medical college unless previous permission of the Central Government is obtained in accordance with the recommendation of the Medical Council of India. The entire scheme of Section 10A of the Act has to be read in consonance with other sub-sections to further the object behind the amending Act. The object being to achieve the highest standard of medical education. The said objective can be achieved only by ensuring that a medical college has the requisite infrastructure to impart medical education. The object of amending

Sections 10A, 10B and 10C was for a specific purpose of controlling and restricting unchecked and unregulated mushroom growth of medical colleges without requisite infrastructure resulting in decline in the maintenance of highest standard of education. The highest standard of medical education is only possible when the requirement of provisions of Section 10A and the Regulations are complied with. It has been experienced that, unless there is required infrastructure available in the medical college, the standard of medical education has declined. Unless an institution can provide complete and full facilities for training to each student who is admitted in various disciplines, the medical education would remain incomplete and the medical college would be turning out half-backed doctors which, in turn, would adversely affect the health of the public in general.

14. In **Medical Council of India v. Chairman, S.R. Educational and Charitable Trust [2018 SCC OnLine SC 2276 : 2018 (4) KLT SN 70]** the Apex Court held that, considering the deficiencies [i.e., lack of patients, teaching faculty, sufficient number of surgical procedures, etc.], permitting an unequipped medical college to impart medical education without proper

infrastructure and faculty would be against the efficacious medical education. Patients serve as the object of teaching. By such an approach ultimately the interest of the society would suffer. Half-baked doctors cannot be left loose on society like drones and parasites to deal with the life of patients in the absence of proper educational training. It would be dangerous and against the right to life itself, in case unequipped medical colleges are permitted to impart substandard medical education without proper facilities and infrastructure. In the said decision, the Apex Court noticed that, as per clause (a) of the proviso to Regulation 8(1) of the Medical Council of India Establishment of Medical College Regulations, 1999, as amended by the Medical Council of India Establishment of Medical College (Amendment) Regulations, 2010, in respect of colleges in the stage upto II renewal (i.e., admission of third batch) if it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is less than 60%, such an institute will not be considered for renewal of permission in that academic year.

15. In **Chintpurni Medical College and Hospital v. State**

of Punjab [(2018) 15 SCC 1], a decision relied on by the learned counsel for the petitioner, the Apex Court was dealing with a writ petition filed under Article 32 of the Constitution of India challenging the action of 1st respondent State of Punjab in withdrawing the essentiality certificates dated 07.12.2010 and 15.02.2011 issued to the petitioner college under Section 10A of the Indian Medical Council Act, 1956 read with the Medical Council of India Establishment of Medical College Regulations, 1999. The State issued a show-cause notice dated 03.05.2017 calling upon the petitioner college to show cause as to why the essentiality certificate should not be withdrawn. Thereafter, the State passed an order dated 01.11.2017 in which it was held that the petitioner college has made hollow claims for removing deficiencies and failed to show-cause why the essentiality certificate should not be withdrawn. Though several opportunities of personal hearing were afforded, the petitioner college failed to rebut the findings of the inspection reports. Having found persistent deficiencies, the 1st respondent State ordered withdrawal of the essentiality certificate issued to the petitioner college, in exercise of the powers reserved under the following conditions in the essentiality certificate dated

07.12.2010;

> "(vii) The inspection of the institute shall be carried out on yearly basis upto the completion of the study of first batch of the students. Thereafter, the inspection shall be periodical after three years.
>
> xxx xxx xxx
>
> (xi) The Punjab Government will have the right to withdraw the Essentiality Certificate/No objection Certificate if the trust/society/ applicant failed to meet any of the conditions contained therein."

16. In **Chintpurni Medical College and Hospital**, after referring to the provisions under the Inian Medical Council Act, 1956 and the Medical Council of India Establishment of Medical College Regulations, 1999 the Apex Court held that, in the essentiality certificate in Form 2 the concerned State Government is required to certify that it has decided to issue an essentiality certificate for the establishment of a medical college with a specified number of seats in public interest, and further that such establishment is feasible. Importantly, the State Government is required to certify that if the applicant fails to create an infrastructure for the Medical College as per the MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of those seats

that already admitted in the college with the permission of the Central Government. An amendment to the notification also requires a declaration that the applicant owns and possesses adequate land on which non-agricultural use of the land is permitted and on which a medical college can be established. It further requires a declaration to the effect that the hospital and medical college have been granted completion certificate/building use certificate. The purpose of essentiality certificate is, *inter alia*, to prevent the establishment of a college where none is required or to prevent unhealthy competition between too many medical colleges. The Apex Court held further that, once the State Government has certified that the establishment of a medical college is justified, it cannot at a later stage say that there was no justification for the establishment of the college. Surely, a person who establishes a medical college upon an assurance of a State Government that such establishment is justified cannot be told at a later stage that there was no justification for allowing him to do so. Moreover, it appears that the power to issue an essentiality certificate is a power that must be treated as exhausted once it is exercised, except of course in cases of fraud. The rules of equity

and fairness and promissory estoppel do not permit the Court to take a contrary view.

17. In **Chintpurni Medical College and Hospital**, it was submitted by the learned counsel for the 1st respondent State that, since the essentiality certificate certifies the availability of adequate clinical material for the proposed medical college, as per the Regulations, the State has the necessary power of inspection of the college even after its establishment to ensure that there is adequate clinical material. The Apex Court rejected the said submission since the State is enjoined to certify adequate clinical material only at the time of proposal of the medical college and not after it is established. The term 'adequate clinical material' is understood in the field of Medical Education to mean data about number of admissions, number of discharges, number of deaths, number of surgeries, number of procedures, X-rays and laboratories investigations. Thus, what the State is required to certify is the data available in the region to justify the establishment of the proposed medical college.

18. In **Chintpurni Medical College and Hospital** the Apex Court noticed that no provision of the Indian Medical Council Act

confers any power on the State Government or Union Territory Administration to issue an essentiality certificate. What the Regulations do 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 recognises an essentiality certificate issued by the State Government. The essentiality certificate must be taken to have been issued under the Indian Medical Council 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 said Act or the Regulations, it would be futile to enquire if a corresponding power to withdraw the same has been conferred on the State. Even assuming that a power to issue such a certificate has been impliedly conferred by the Regulations under the said 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, 1897. In that view of the matter, the Apex Court held that condition No.(xi) is ultra vires the provisions of the Indian Medical Council Act and Regulations. Accordingly, the Apex Court quashed the order dated 01.11.2017 of the 1st respondent

State of Punjab, withdrawing the essentiality certificate and set aside condition Nos.(vii) and (xi), which are declared illegal. In the said decision the Apex Court has made it clear that the State Government would be entitled to withdraw essentiality certificate where it is obtained by playing fraud on it or any circumstances where the very substratum on which the essentiality certificate was granted disappears or any other reason of like nature.

19. In the instant case, by Ext.P10 order dated 21.11.2020 of the respondent State, which is under challenge in W.P.(C) No.26777 of 2020 the application made by the petitioner for essentiality certificate for starting a new medical college stands rejected for the reasons stated therein. Though the petitioner was granted Exts.P2 to P7 essentiality certificates for starting a new medical college, for the academic years specified in the respective certificates, the petitioner could not secure approval from the Medical Council of India. Therefore, the request made by the petitioner, which stands rejected by Ext.P10 order dated 21.11.2020 of the respondent State, is a fresh application for essentially certificate for starting a new medical college.

20. In the essentiality certificate that has to be issued in

Form 2, the respondent State has to certify that the applicant owns and manages a 300 bedded hospital; it is desirable to establish a medical college in the public interest; establishment of a medical college at that place by the applicant Society/Trust is feasible; and adequate clinical material as per the Medical Council of India norms is available. The respondent State has to further certify that in case the applicant fails to create infrastructure for the medical college as per Medical Council of India norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government. In view of the provisions under the Medical Council of India Establishment of Medical College Regulations, 1999 one of the qualifying criteria to apply in Form 1, for permission to set up a medical college, is that the applicant owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college. When the deficiencies noted in Annexure I inspection report prepared by the inspection team deputed by the Director of Medical Education are serious in nature,

and inadequacy of clinical material in the locality is evident from the bed occupancy, number of surgeries, number of births and deaths, etc., in the petitioner's hospital, the respondent State cannot be found fault with in rejecting, vide Ext.P10 order dated 21.11.2020 in W.P.(C)No.26777 of 2020, the request made by the petitioner for essentiality certificate to start a new medical college at the proposed site.

21. In **Mar Gregorious Memorial Muthoot Medical Centre v. Kerala University of Health and Allied Sciences [2011 (4) KHC 333]**, the question that came up for consideration before a learned Judge of this Court in W.P.(C)Nos.24933 of 2011 and 26443 of 2011 was as to whether Kerala University of Health Sciences is supposed to act just as a 'rubber stamp' in the matter of granting affiliation to institutions invoking the power under Section 50 or 53 of the Kerala University of Health Sciences Act, 2010, once approval is granted in respect of the courses and infrastructure by Indian Nursing Council and Kerala Nurses and Midwives Council. Relying on two Full Bench decisions of this Court in **Vikram Sarabhai Educational Trust & B.Ed College v. University of Calicut [2008 (2) KHC 647]** and **K. Velayudhan**

Memorial Trust [2010 (3) KHC 23] it was contended that the University does not have any power or authority to decline affiliation in respect of B.Sc Nursing course or Post Basic B.Sc Nursing course sanctioned by Nursing Council or reduce the intake by stipulating some or other norms of their choice.

22. In **Mar Gregorious Memorial Muthoot Medical Centre** this Court found considerable force in the submission made by the learned Standing Counsel for the University that the decision rendered by the Full Bench is not an authority to hold that affiliation to be given by the University is only an empty formality or that once sanction is given by the State Council as aforesaid, affiliation to be given by the University is automatic. There is no such declaration of law in the decision rendered by the Full Bench referring to the relevant provisions of the University Act/Statute or as to the relative rights and liberties of the University in relation to the powers and authority of the Indian Nursing Council/Kerala Nurses and Midwives Council. In **Upasana College of Nursing v. Kerala University for Health and Allied Sciences [2010 (4) KHC 224]** it was held that, granting of affiliation by the University is not an automatic exercise once sanction/permission is obtained

from Indian Nursing Council/ Kerala Nurses & Midwives Council. Interference was declined and the writ petitions preferred by the concerned institutions were dismissed as devoid of any merit. The matter was taken up in appeal by the aggrieved institutions. After detailed hearing, the Division Bench, vide judgment dated 13.10.2010 in W.A.No.1715 of 2010 and connected cases, held that the process of affiliation was never automatic. The grant of affiliation is not an empty formality by the University. The University which awards the degree certificates can always ensure that students undergo the proper course study in an eligible institution in accordance with the curriculum prescribed by the University. Further, referring to the relevant provisions under the Calicut University Act and the Calicut University First Statutes, 1977, it has been held by a Division Bench of this Court in **University of Calicut v. Amala Institute of Medical Sciences [2009 (2) KHC 71]** that the University is having ample power to inspect the college seeking affiliation and that the institution is bound to furnish any information called for in this regard. It has also been held that, if there is any serious deficiency in the manner of running the college, the University can definitely take action

against the college and 'dis-affiliate' it; the power to dis-affiliate being corollary to the power to affiliate and that the University is vested with the power to conduct necessary inspection and to satisfy itself as to the availability of infrastructure and such other aspects. As the primary function of the University is to guarantee quality education, maintaining/ regulating academic standards of the affiliated institutions, it is open for the University to prescribe conditions for recognition of the institutions, which is not in conflict with the norms prescribed by the INC under the Central Act. As such, the contention of the petitioners that the respondent University is bound to 'sign on the dotted lines' for granting affiliation, the petitioners having obtained sanction/approval from the Central/State Council, is wrong and unfounded.

23. In **K.V.M. Trust v. Kerala University of Health & Allied Sciences [2011 (4) KHC 948]** [W.A.No.1528 of 2011 arising out of W.P.(C)No.26443 of 2011] the appellant contended, *inter alia*, that once the Indian Nursing Council and the State Nurses and Midwives Council accorded permission for the intake of 50 students, the respondent University has no authority to restrict the intake to a lesser number. The Division Bench, relying on the

decisions in **Amala Institute of Medical Sciences [2009 (2) KHC 71]** and **Upasana College of Nursing [2010 (4) KHC 224]** and also the Regulations of the Indian Nursing Council held that the permission accorded by the Indian Nursing Council is basing upon a prima facie satisfaction of the availability of the infrastructure facilities and it is for the State Council to accord its permission as well as the respondent University to conduct inspection and satisfy the availability of the infrastructure facilities for running the course before granting affiliation. Therefore, the Division Bench upheld the finding of the learned Single Judge that granting affiliation is not an empty formality.

24. In **Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P. [2013 (2) SCC 617]** the Apex Court, in the context of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 held that, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by the Institute. If either of them is not granted to the institute, it would not be in a position to commence the relevant academic courses. There is a possibility of some conflict between a University Act or Ordinance relating to affiliation with the

provisions of the Central Act. In such cases, the matter is squarely answered in the case of **State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [(2006) 9 SCC 1]** where the Court stated that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It also observed that provision of the Universities Act regarding affiliation of technical colleges and conditions for grant of continuation of such affiliation by university would remain operative but the conditions that are prescribed by the university for grant and continuation of affiliation must be in conformity with the norms and guidelines prescribed by the National Council for Teacher Education (NCTE). Under Section 14 of the National Council for Teacher Education Act, 1993 and particularly in terms of Section 14(3)(a), the NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. In other words, granting

recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body. It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expressions of distinct meaning and consequences. In the case of **Chairman, Bhartia Education Society v. State of Himachal Pradesh [(2011) 4 SCC 527]** it was held that the purpose of recognition and affiliation is different. In the context of the Act, affiliation enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diploma and certificates. On the other hand, recognition is the licence to the institution to offer a course or training in teaching education. The Court also emphasised that the affiliating body/examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. The examining body can impose conditions in relation to its own requirements. These aspects are (a) eligibility of students for

admission; (b) conduct of examinations; (c) the manner in which the prescribed courses should be completed; and (d) to see that the conditions imposed by the NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto.

25. In view of the provisions under the Medical Council of India Establishment of Medical College Regulations, 1999 one of the qualifying criteria to apply in Form 1, for permission to set up a medical college, is that consent of affiliation in Form 3 for the proposed medical college has been obtained by the applicant from a University. In the consent of affiliation issued in Form 3, the University has to certify that, on the basis of the report of the Local Inquiry Committee the University has agreed, in principle, to affiliate the proposed medical college to be established at the proposed site by the applicant subject to grant of permission by the Government of India, Ministry of Health and Family Welfare,

New Delhi under Section 10A of the Indian Medical Council Act, 1956. One of the qualifying criteria to apply in Form 1, for permission to set up a medical college, is that the applicant owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college.

26. As stated in Ext.P9 order in W.P.(C)No.26397 of 2020, based on the report of the Scrutiny Committee the deficiencies in infrastructure, equipment, clinical materials and faculties were notified to the petitioner, vide Ext.P7. On the day of inspection, the bed occupancy was only 30%. Out patients required is 600 and the attendance on the day of inspection was only less than 200. The construction of the building is not completed. There is no Blood Bank. Available beds in ICU/ICCU/PICU/NICU/SICU/Obstetric ICU/ ICU is only 18, as against the requirement of 60 beds. No in-house facilities are available in Pathology and Microbiology Lab and most of the requirements are outsourced. Various deficiencies noted by the Scrutiny Committee could not be rectified in a short time. Therefore, considering the gross deficiencies noted in the report of the Scrutiny Committee, which is still existing, it was decided,

based on the recommendation of the Scrutiny Committee, not to grant consent of affiliation to the petitioner for starting a new medical college with an annual intake of 150 seats for MBBS, for the academic year 2021-22. When the deficiencies noted are serious in nature, the respondent University cannot be found fault with in rejecting, vide Ext.P9 order dated 23.11.2020 in W.P.(C)No.26397 of 2020, the request made by the petitioner for consent of affiliation to start a new medical college at the proposed site.

27. It is pertinent to note that, in **State of Kerala v. V.N. Public Health and Education Trust [Civil Appeal Nos.2920 of 2020 and 2921 of 2020 - Order dated 07.08.2020]** a Three-Judge Bench of the Apex Court was considering a case in which the 1st respondent Trust (the petitioner herein) filed W.P.(C)No.27266 of 2019 questioning Ext.P6 communication by which the State Government expressed its inability to consider the request made to issue essentiality certificate to establish medical colleges in the private sector in Palakkad district. A learned Single Judge, vide judgment dated 19.11.2019, quashed Ext.P6 communication and directed the Government to issue an essentiality certificate in the

proforma on or before 30.11.2019. It was also directed that the Medical Council of India shall accept the essentiality certificate issued by the State Government, in terms of the judgment, as one received on time. That judgment was affirmed by the Division Bench in W.A.No.2443 of 2020. Civil Appeal No.2920 of 2020 arises out of those judgments. The 1st respondent Trust filed another writ petition, i.e., W.P.(C)No.29098 of 2019 challenging the decision taken by the Kerala University of Health Sciences, rejecting the request to grant consent of affiliation. In that writ petition the prayer for interim relief against refusal to grant consent of affiliation was rejected by the learned Single Judge, as per the order dated 31.10.2019. The 1st respondent Trust filed yet another writ petition, i.e., W.P.(C)No.34275 of 2019 with a prayer to direct the Medical Council of India and the Government of India to process the application filed by the Trust without insisting for the essentiality certificate or the consent of affiliation. By the order dated 13.12.2019, the learned Single Judge allowed that interim relief. Civil Appeal No.2921 of 2020 arises out of that order. After considering the the rival contentions, the Apex Court held that the order dated 13.12.2019 of the High Court in W.P.(C)No.34275 of

2019 is palpably illegal and could not have been passed, in view of the fact that, in case any order was to be solicited, it was to be passed by the Apex Court in the pending SLP, out of which C.A.No.2920 of 2020 arises. It was absolutely improper for the High Court to pass such an order directing the Medical Council of India to process the application without consent of affiliation granted by the University and essentiality certificate granted by the State Government. Both directions were illegal. It is pre-requisite for the Medical Council of India to process any application that the essentiality certificate and consent of affiliation are produced. Apart from that, pursuant to the refusal to grant consent of affiliation, W.P.(C)No.29098 of 2019 was filed. That was pending consideration. The High Court declined the interim order. The filing of the third writ petition was uncalled for. The High Court ought to have decided the issue of essentiality certificate for which W.P.(C)No.27266 of 2019 was filed with W.P.(C)No.29098 of 2019 regarding grant of consent of affiliation. The matter of permission to establish and/or recognition could not have been processed by the Medical Council of India/Government of India without essentiality as well as consent of affiliation. The Apex Court

allowed the Civil Appeals filed by the State, by quashing the interim order passed in W.P.(C)No.34275 of 2019 on 13.12.2019 and the judgment passed by the Division Bench in W.A.No.2443 of 2019 dated 5.12.2019, thereby affirming the order dated 19.11.2019 of the learned Single Judge in W.P.(C)No.27266 of 2019. The Apex Court ordered that let the writ petitions, i.e., W.P. (C)Nos.27266 of 2019 and 29098 of 2019, be decided analogous to avoid any conflicting decision as they are intertwined issues. As several considerations may be common, the grant of consent of affiliation and essentiality certificate may depend upon several factors. As per the guidelines of Government and of the University, various aspects are to be examined. By merely quashing of order based on policy, the grant of essentiality or consent of affiliation does not follow automatically. They have to be considered as per prevailing norms.

28. In the above circumstances, this Court finds no reason to interfere with Ext.P9 order dated 23.11.2020 in W.P.(C) No.26397 of 2020 of the respondent University, whereby the application made by the petitioner for consent of affiliation for starting a new medical college stands rejected; and Ext.P10 order

dated 21.11.2020 in W.P.(C) No.26777 of 2020 issued by the respondent State, whereby the application made by the petitioner for essentiality certificate for starting a new medical college stands rejected.

In the result, both the writ petitions fail and they are accordingly dismissed. No order as to costs.

Sd/-
ANIL K. NARENDRAN
JUDGE

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APPENDIX OF WP(C) 26397/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**COPY OF JUDGMENT DATED 03.11.2020 IN W.A. 1401/2020 OF THE HIGH COURT OF KERALA.**
EXHIBIT P2	**COPY OF THE JUDGMENT DATED 12.10.2020 IN W.P.(C)29098/2019 OF HIGH COURT OF KERALA.**
EXHIBIT P3	**COPY OF THE ORDER DATED 20.10.2020 IN RP 777/2020 IN W.P.(C)29098/2019 OF HIGH COURT OF KERALA.**
EXHIBIT P4	**COPY OF THE LETTER NO.VNPT/KUHS/11/2020 DATED 03.11.2020 SENT BY THE PETITIONER.**
EXHIBIT P5	**COPY OF THE LETTER NO.VNPT/KUHS/11/2020 DATED 10.11.2020 SENT BY THE PETITIONER.**
EXHIBIT P6	**COPY OF THE LETTER NO.VNPT/KUHS/11/2020 DATED 20.11.2020 SENT BY THE PETITIONER.**
EXHIBIT P7	**COPY OF THE LETTER NO.23772/2020/AC1/MED B3/KUHS DATED 20.11.2020 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.**
EXHIBIT P8	**COPY OF THE LETTER NO.VNPT/KUHS/CONSENT OF AFFILIATION/11/2020 DATED 23.11.2020 SENT BY THE PETITIONER.**
EXHIBIT P9	**COPY OF THE ORDER NO.UO.NO.23772/2020/AC1/MED B3/KUHS DATED 23.11.2020 OF THE 1ST RESPONDENT.**
EXHIBIT P10	**COPY OF THE ORDER/NOTICE NO.NMC SECY/2020/06 DATED 27/11/2020 OF THE 2ND RESPONDENT.**
EXHIBIT P11	**COPY OF APPLICATION NO.DNO/ACADEMIC/UG/21/19/MESMC DATED 05/07/2019 OF MES MEDICAL COLLEGE.**

EXHIBIT P11(a):	**COPY OF REVALIDATED CONSENT OF AFFILIATION NO.2468/AC1/MED/B1/2019/KUHS DATED 05/07/2019 OF 1ST RESPONDENT.**
EXHIBIT P12:	**COPY OF APPLICATION NO.910/ACA(B)/2018/TMCK DATED 29/06/2019 OF TRAVANCORE MEDICAL COLLEGE.**
EXHIBIT P12(A):	**COPY OF REVALIDATED CONSENT OF AFFILIATION NO.1383/AC1/MED/B2/2018/ KUHS DATED 04.07.2019 OF 1ST RESPONDENT.**
EXHIBIT P13:	**COPY OF INFORMATION DATED 21.10.2019 OF THE STATE PUBLIC INFORMATION OFFICER OF 1ST RESPONDENT.**
EXHIBIT P14:	**COPY OF LETTER OF CONSENT NO.2772/AC1.1/2010/KUHAS DATED 02.08.2011 ISSUED BY 1ST RESPONDENT.**
EXHIBIT P15:	**COPY OF PROVISIONAL CONSENT OF AFFILIATION NO.9427/AC.A/KUBS/2014 DATED 31.08.2015 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P16:	**COPY OF THE JUDGMENT DATED 29.04.2016 IN W.P.(C)NO.16461/2016 OF 18 HIGH COURT OF KERALA.**
EXHIBIT P17:	**COPY OF THE JUDGMENT DATED 04.07.2017 IN W.P.(C)NO.22103/2017 OF 21 HIGH COURT OF KERALA.**

RESPONDENTS' EXHIBITS:NIL

APPENDIX OF WP(C) 26777/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**COPY OF ORDER NO.G.O. (RT)NO.2474/2003/H&FWD DATED 22.08.2003.**
EXHIBIT P2	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 24.01.2004 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P3	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 18.06.2009 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P4	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 12.01.2011 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P5	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 10.06.2014 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P6	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 31.08.2015 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P7	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 11.12.2015 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P8	**COPY OF ORDER NO.S3/272/2019-HEALTH DATED 01.10.2019.**
EXHIBIT P9	**COPY OF THE JUDGMENT DATED 03.111.2020 IN W.A.1401/2020 OF THE HIGH COURT OF KERALA.**
EXHIBIT P10	**COPY OF THE ORDER NO.G.O. (RT)NO.2178/2020/H&FWD DATED 21.11.2020.**
EXHIBIT P11	**COPY OF OCCUPANCY CERTIFICATE NO.A9/6328/20 DATED 09.09.2020 ISSUED BY PUDUSSERY GRAMA PANCHAYAT.**

EXHIBIT P12	**COPY OF STATEMENT FILED IN W.P. (C)34278/2019 OF THE HIGH COURT OF KERALA.**
EXHIBIT P13	**COPY OF THE ESSENTIALITY CERTIFICATE DATED 19.10.2020 ISSUED TO QUILON MEDICAL TRUST, UMAYANELLUR, KOLLAM.**
EXHIBIT P14	**COPY OF CERTIFICATE NO.A4-1015/2020 DATED 18/05/2020 ISSUED BY PUDUSSERY GRAMA PANCHYAT.**

1ST RESPONDENT'S ANNEXURES:

ANNEXURE-I	**TRUE COPY OF THE REPORT SUBMITTED BY THE DIRECTOR OF MEDICAL EDUCATION BEFORE THE GOVERNMENT ON 19.11.2020.**
ANNEXURE-II	**TRUE COPIES OF SIX PHOTOGRAPHS TAKEN BY THE INSPECTION TEAM SHOWING THE BUILDINGS, HOSTPIAL WARDS ETC IN THE PETITIONER INSTITUTION.**

TRUE COPY

P.A. TO JUDGE