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.27034 OF 2020(D)

PETITIONER:

MALABAR MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTRE, ESTABLISHED BY SREE ANJANEYA MEDICAL TRUST, MODAKALLUR, KOZHIKKODE-673323, REPRESENTED BY ITS AUTHORISED SIGNATORY.
BY ADVS.
SRI.P.SANJAY
SMT.A.PARVATHI MENON
SRI.BIJU MEENATTOOR
SRI.PAUL VARGHESE (PALLATH)
SRI.P.A.MOHAMMED ASLAM
SRI.KIRAN NARAYANAN
SHRI.PRASOON SUNNY
SHRI.RAHUL RAJ P.

RESPONDENTS:

1 **UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH, NEW DELHI-110001.**

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

3 **NATIONAL MEDICAL COMMISSION (NMC), (PREVIOUSLY MEDICAL COUNCIL OF INDIA), POCKET-14, SECTOR 8, DWARKA, NEW DELHI-110077.**

4 **KERALA UNIVERSITY OF HEALTH AND ALLIED SCIENCES, THRISSUR, REPRESENTED BY ITS REGISTRAR-680596.**

R1 BY ADV. KUM.S.KRISHNA
R3 BY ADV. SRI.TITUS MANI
R4 BY SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH SCIENCES
SRI M.A ASIF- SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, namely, Malabar Medical College Hospital and Research Centre, Modakallur, is an educational institution imparting medical education, both Undergraduate (UG) and Postgraduate (PG) level, based on the approval granted originally by the Medical Council of India and presently by the 3rd respondent National Medical Commission, and the affiliation granted originally by the University of Calicut and presently by the 4th respondent Kerala University of Health Sciences. On 02.12.2020, the petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P8 communication dated 23.11.2020 issued by the 3rd respondent National Medical Commission, whereby the petitioner is required to produce consent of affiliation from the 4th respondent University, in terms of the provisions under the Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, for starting the following PG courses, for the academic year 2021-22;

MD (Community Medicine),

MS (General Surgery),
MS (Otorhinolaryngology), and
MD (Paediatrics).

The petitioner has also sought for a writ of mandamus commanding the 3rd respondent National Medical Commission to consider the applications for enhancement/starting PG courses, for the academic year 2021-22, which are pending and listed in Ext.P10 representation dated 27.11.2020 submitted before the Senior Advisor of the 3rd respondent National Medical Commission, without insisting for the consent of affiliation from the 4th respondent University.

2. On 04.12.2020, when this writ petition came up for admission, the learned Standing Counsel for the 3rd respondent National Medical Commission and also the learned Standing Counsel for the 4th respondent University were directed to get instructions.

3. On 09.12.2020, the petitioner has filed I.A. No.1 of 2020, seeking an order to amend the writ petition by incorporating additional statement of acts and additional/alternative reliefs. By the order dated 09.12.2020 the said interlocutory application was allowed and the petitioner was directed to file amended writ

petition. The additional/alternative reliefs sought for are as follows;

> "(iii) Issue a writ of mandamus directing the 4th respondent University to grant consent of affiliation with or without inspection in such manner that the same reaches the 3rd respondent on or before 15.12.2020.
>
> (iv) Issue a writ of mandamus directing the 3rd respondent to grant such further time that this Court may deem fit for production of consent of affiliation in the facts and circumstances of the case."

4. On 11.12.2020, when this writ petition came up for consideration, the learned Standing Counsel for the University submitted that a statement on behalf of the 4th respondent shall be placed on record by 14.12.2020. While ordering the matter to be listed on 15.12.2020, this Court directed the 3rd respondent National Medical Commission not to reject the applications made by the petitioner for enhancement/starting PG courses, for the academic year 2021-22, for want of consent of affiliation, for a period of one week.

5. A statement has been filed on behalf of the 4th respondent University, opposing the reliefs sought for in this writ petition.

6. Heard the learned counsel for the petitioner, the learned Assistant Solicitor General of India for the 1st respondent Union of

India, the learned Special Government Pleader for the 2nd respondent State, the learned Standing Counsel for the 3rd respondent National Medical Commission and also the learned Standing Counsel for the 4th respondent Kerala University of Health Sciences.

7. The petitioner Medical College is having approval and affiliation since 2010 for MBBS Course with an annual intake of 150 seats. In order to start PG courses in MD General Medicine; MS General Surgery; MD Paediatrics; MS Orthopaedics; MD Dermatology, Venereology & Leprosy; MS Otorhinolaryngology; MS Ophthalmology; MD Psychiatry; and MD Community Medicine, for the academic year 2020-21, the petitioner college made applications before the Board of Governors in supersession of Medical Council of India. While issuing consent of affiliation, the 4th respondent University reduced the number of seats in each course as two. The Board of Governors, while granting letter of permission for the said PG courses, for the academic year 2020-21, limited the intake as two seats each. Feeling aggrieved, the petitioner had approached this Court in W.P.(C)No.14835 of 2019 and that writ petition was disposed of by Ext.P1 judgment dated 04.03.2019. Paragraph 7 of the judgment reads thus;

"7. Keeping in view the changed criteria by referring to which the case for grant of consent of affiliation is considered and granted by respondents, I am satisfied the writ petition can be disposed of by this judgment:-

a) The petitioner is given two weeks time from today to submit or upload the application of petitioner for grant of consent of affiliation for the balance of seats for which the University did not favourably consider for the academic year 2019-20.

b) To enable petitioner to submit or upload, the second respondent University is directed to facilitate by keeping the window of petitioner college open for fifteen days from today.

c) The application now presented by the petitioner shall be treated as one submitted or uploaded for reconsideration by the second respondent University and if necessary, relaxation as is available with respondents is directed to be considered and granted to petitioner while processing the present request.

d) The respondents after carrying out inspections as are required in this behalf, upon receipt of reports in this behalf, will consider the case of the petitioner for grant of consent of affiliation for the academic year 2021-22, as early as possible preferably within the time schedule applicable in this behalf."

8. In view of COVID 19 pandemic, vide public notice dated 22.05.2020 issued by the Medical Council of India, the last date for submission of applications to the Board of Governors in supersession of Medical Council of India for starting new PG medical courses/increase in admission capacity in PG medical courses was extended upto 31.07.2020. The 4th respondent University submitted Ext.P2 request dated 24.07.2020 before the the Board of Governors seeking extension of the last date for submission of such applications or accept such applications of medical colleges under the University without consent of affiliation and provide ample time for granting consent of affiliation to such colleges. In Ext.P2, it was pointed out that the University received more than 100 applications for starting new PG medical courses/increase in admission capacity in PG medical courses and in view of wide spread of COVID 19, the University is facing difficulty in conducting assessment in the concerned colleges so as to issue consent of affiliation before 31.07.2020.

9. On 29.07.2020, the petitioner made applications before the Board of Governors for increase in admission capacity in the following PG courses, for the academic year 2021-22; MD

Dermatology, Venereology & Leprosy; MD General Medicine; MD Paediatrics; MD Psychiatry; MS General Surgery; MS Ophthalmology; MS Orthopaedics; MS Otorhinolaryngology; and MD Community Medicine. The petitioner also made applications for starting the following new PG courses, for the academic year 2021-22; MD Anaesthesiology; MD Pulmonology; MD Emergency Medicine; MS Obstetrics and Gynaecology; and MD Pathology. The aforesaid applications made by the petitioner, on 29.07.2020 were not supported by the consent of affiliation of the 4th respondent University.

10. The 4th respondent University conducted inspection and granted consent of affiliation to the petitioner for additional intake in 5 PG medical courses and for starting 1 new PG medical course, for the academic year 2021-22. On 17.08.2020, the 4th respondent University issued Exts.P4, P4(a), P4(b), P4(c) and P4(d) consent of affiliation for additional intake in the following 5 PG medical courses; MS Orthopaedics (2 seats); MD Paediatrics (2 seats); MD Dermatology, Venereology & Leprosy (1 seat); MD General Medicine (2 seats); and MS Ophthalmology (1 seat). The University issued Ext.R4(e) consent of affiliation for starting MD

Anaesthesiology, for the academic year 2021-22, with an intake of 2 seats. On 29.08.2020, the petitioner forwarded Exts.P4, P4(a), P4(b), P4(c), P4(d) and P4(e) consent of affiliation issued by the University to the Board of Governors in supersession of Medical Council of India.

11. On 14.09.2020, the petitioner approached this Court in W.P.(C)No.18931 of 2020 seeking an order directing the Board of Governors in supersession of Medical Council of India to proceed with the applications dated 29.07.2020 for increase in admission capacity in 9 PG medical courses, for the academic year 2021-22, made pursuant to Ext.P1 judgment in W.P.(C)No.14835 of 2019, without insisting payment of fee. On 15.09.2020, when that writ petition came up for admission, this Court recorded the submission made by the learned Standing Counsel for the Medical Council of India that the applications made by the petitioner would be considered on payment of fee, subject to the result of the writ petition. A copy of that order is placed on record as Ext.P3.

12. The 3rd respondent National Medical Commission constituted under the National Medical Commission Act, 2019, came into force on 25.09.2020, by Gazette notification dated

24.09.2020, by dissolving the Board of Governors in supersession of Medical Council of India constituted under Section 3A of the Indian Medical Council Act, 1956. The petitioner submitted Ext.P5 representation dated 05.10.2020 before the 3rd respondent, which was followed by Ext.P6 representation dated 22.10.2020, seeking bank account details for remitting fee in respect of the applications made for increase in admission capacity in 9 PG medical courses, pursuant to Ext.P1 judgment in W.P.(C)No.14835 of 2019. On 18.11.2020, the 3rd respondent sent Ext.P7 reply, whereby the petitioner was informed that the bank account details are available in the website, which have already been sent vide e-mail dated 23.10.2020. Going by the averments in the writ petition, on 20.22.2020, the petitioner remitted the requisite fee with the 3rd respondent, by transferring an amount of Rs.42,48,000/-.

13. On 23.11.2020, the 3rd respondent issued Ext.P8 communication, whereby the petitioner was informed that, on a scrutiny of the applications made on 29.07.2020, in terms of the provisions under Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations,

2000, for increase in admission capacity in MD Dermatology, Venereology & Leprosy; MD General Medicine; MD Paediatrics; MD Psychiatry; MS General Surgery; MS Ophthalmology; MS Orthopaedics; MS Otorhinolaryngology; and MD Community Medicine, for the academic year 2021-22, it was found that consent of affiliation has not been submitted in respect of the following courses, namely, MD Community Medicine; MS General Surgery; MS Otorhinolaryngology; and MD Paediatrics. By the said communication, the petitioner was requested to pay application fee of Rs.4,72,000/- for each course through RTGS/NEFT. On receipt of Ext.P8, the petitioner submitted Ext.P9 reply dated 24.11.2020 pointing out that the requisite fee amounting to Rs.42,48,000/- has already been transferred on 20.11.2020, by RTGS. Ext.P9 reply was followed by Ext.P10 reply dated 27.11.2020, whereby the 3rd respondent is requested to consider the applications without insisting consent of affiliation from the 4th respondent University, in respect of MD Community Medicine; MS General Surgery; MS Otorhinolaryngology; and MD Paediatrics. On 07.12.2020 the 3rd respondent issued Ext.P11 communication, whereby the petitioner was informed that in the applications made on 27.11.2020 for

starting PG courses in MD Respiratory Medicine; MD Emergency Medicine; MD Pathology; and MS Obstetrics and Gynecology, for the academic year 2021-22, the petitioner has to produce consent of affiliation from the 4th respondent University, on or before 15.12.2020.

14. The stand taken by the 4th respondent University is that, in terms of the directions contained in Ext.P1 judgment of this Court in W.P.(C)No.14835 of 2019, the University considered the request made by the petitioner for consent of affiliation for increase of intake in PG medical courses and granted Exts.P4, P4(a), P4(b), P4(c) and P4(d) consent of affiliation in respect of 5 PG medical courses, for the academic year 2021-22. Based on another application, the University granted Ext.P4(e) consent of affiliation for starting 1 new PG medical course, for the academic year 2021-22. As per Section 10A of the Indian Medical Council Act, 1956 and Regulation 3 of the Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, the consent of affiliation from the University is one of the qualifying criteria for applying for

commencement of new PG medical course or for increase of intake in PG medical course. Therefore, an institution is eligible to apply for commencement of new PG medical course or for increase of intake in PG medical course only if it possesses the consent of affiliation issued by the University. In view of the provisions under Regulation 4, an application found complete in all respects, which is submitted within the time limit stipulated in the Schedule, alone can be accepted for evaluation and recommendation. In case the application is not complete in all respects, the same shall be returned to the institution concerned. Therefore, the application submitted by the petitioner for commencement of new PG medical courses/for increase of intake in PG medical courses, which were not supported by the consent of affiliation granted by the University cannot be accepted for evaluation and recommendation of the 3rd respondent. The 4th respondent would contend that the petitioner did not challenge the decision of the University, in issuing Exts.P4, P4(a), P4(b), P4(c) and P4(d) consent of affiliation for increase of intake, only for 5 PG medical courses and Ext.P4(e) consent of affiliation for starting only 1 new PG medical course, for the academic year 2021-22. In the absence of any challenge, the

petitioner cannot seek a direction against the University to issue consent of affiliation at this point of time, in respect of the remaining courses.

15. The stand taken by the 3rd respondent National Medical Commission is that, in view of the provisions under Section 10A of the Indian Medical Council Act, 1956 and Regulations 3 and 4 of the Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, the consent of affiliation from the University is one of the qualifying criteria for applying for commencement of new PG medical course or for increase of intake in PG medical course. Therefore, the applications submitted by the petitioner for commencement of new PG medical course or for increase of intake in PG medical course, which are supported by the consent of affiliation granted by the 4th respondent University alone can be accepted for evaluation and recommendation.

16. Section 10A of the Indian Medical Council Act, 1956 deals with permission for establishment of new medical colleges, new course of study, etc. As per sub-section (1) of Section 10A,

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 recognised medical qualification; or (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this Section. As per clause (a) of sub-section (2) of Section 10A, every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations. As per clause (b) of sub-section (2) of Section 10A, the scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

17. Regulation 3 of the Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or

Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, deals with the permission for establishment of a new or higher course of study, etc. As per Regulation 3, no medical college shall, (a) open a new or higher course of study or training (including a Postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or (b) increase admission capacity in any course of study or training (including a postgraduate course of study or training); except after obtaining the previous permission of the Central Government by submitting Scheme annexed to these Regulations. Paragraph 3 of the Scheme prescribes qualifying criteria. As per Paragraph 3, the medical college/institution shall qualify for opening a new or higher course of study or training (including a postgraduate course of study or training) in the medical colleges/institutions if the conditions enumerated in clauses 1 to 6 are fulfilled. One of the conditions, as per clause 3.3, is that consent of affiliation in the prescribed format with respect to opening of new or higher course of study or training (including

postgraduate course of study or training) and increase of admission capacity in any course of study or training (including a postgraduate course of study or training) has been obtained by the medical college/institution from the University to which it is affiliated.

18. Paragraph 4 of the Scheme deals with registration of application. As per paragraph 4, incomplete applications will be returned by the Ministry of Health and Family Welfare to the medical college/institution along with enclosures and application fee stating the deficiencies in such applications. Applications found complete in all respects shall be registered by the Ministry of Health and Family Welfare and forwarded to the Council within 30 days from the date of receipt of it for evaluation and recommendations. Acceptance of the applications shall only signify the acceptance of the application for evaluation. It shall, however, under no circumstances, mean approval of the application for grant of permission. The period of one year prescribed under the Indian Medical Council Act, 1956 for processing of an application for opening a new or higher courses of study or training (including postgraduate course of study or training) shall commence from the

date of registration of the applications by the Ministry of Health and Family Welfare. During the course of augments, it is pointed out by the learned counsel on both sides that the Board of Governors in supersession of Medical Council of India was directly accepting the applications for opening new or higher courses of study or training in medical colleges, as permitted by the Central Government.

19. In **Royal Medical Trust v. Union of India [(2014) 14 SCC 675]** the Apex Court was dealing with a case in which the appellant, desirous of establishing a new medical college, approached the State Government for grant of the essentiality certificate. On 13.09.2010, the State Government issued the essentiality certificate valid for making an application to the Central Government for academic years 2011-12 and 2012-13. Thereafter, in order to comply with the requirements of Section 10A of the Indian Medical Council Act, the appellant filed an application dated 06.05.2012 before the Kerala University of Health Sciences, to obtain affiliation certificate, before making an application before the Central Government. On 14.06.2012 the University required the appellant to submit the essentiality

certificate from the State Government for the year 2013-14 and a certificate from the Revenue officials stating that the proposed land area is a single plot. The appellant furnished the essentiality certificate dated 16.08.2012 issued by the State Government dated 16-8-2012, for the academic years 2013-14 and 2014-15, on the even date. However, the University did not issue the affiliation certificate well in time, i.e., before 31-8-2012. Therefore, the appellant was constrained to submit the application under Section 10A(2)(a) of the Act to the Central Government, on 20.08.2012, without the affiliation certificate, which was referred to the Board of Governors of Medical Council of India for the purpose of its remarks and recommendations, on 28.08.2012. After the deadline for application for the academic year 2013-14, the University issued the affiliation certificate, which was sought for by the appellant, on 01.11.2012, whereafter the appellant supplied the same to the Medical Council of India for its consideration. However, the Council rejected the application for academic year 2013-14 on the ground, *inter alia*, that the application filed by the appellant though submitted in time was incomplete application in terms of the various statutory regulations

due to non-submission of affiliation certificate on 08.10.2012. Aggrieved by the action of the Council, the appellant filed W.P. (C)No.1549 of 2013, on 14.01.2013, which ended in dismissal by the judgment dated 26.02.2013. The appellant filed W.A.No.671 of 2013 before the Division Bench, which ended in dismissal, by the judgment dated 27.05.2013, affirming the view that the application filed by the appellant was an incomplete application in terms of statutory regulations and therefore, the Council was justified in not registering that application. The correctness of that judgment was called in question by the appellant before the Apex Court.

20. **Royal Medical Trust** the Apex Court noticed that, it is neither in dispute nor can it be disputed by the Council that the appellant had filed an application before the University for grant of affiliation certificate well in time. It is apparent from the record that the said affiliation certificate was not furnished to the appellant in time in spite of sending reminders to the University to furnish the affiliation certificate, *inter alia*, bringing to its notice the urgency involved in the matter. For reasons best known to it, the University did not furnish the said certificate to the appellant. This prompted the appellant to make an application before the Central Government for registration of its application lest the cut-off dates

prescribed by the statutory regulations would have expired and the appellant in that case would have been remediless in light of the dictum laid down in **Mridul Dhar (5) v. Union of India [(2005) 2 SCC 65]** and **Priya Gupta v. State of Chhattisgarh [(2012) 7 SCC 433]** requiring strict adherence to the said prescribed deadlines. The appellant mindful of the aforesaid directions had applied in due time adhering to the statutory timelines. Its application in terms of necessary documents was in fact complete but for the affiliation certificate from the University, which was awaited by the appellant even after several reminders for its issuance to the University pressing upon the urgency of the matter. Since the appellant was not at fault but constrained due to the delay on the part of the University, the Council was expected to have appropriately considered the facts and circumstances of the case pleaded by the appellant and thereafter, reached a conclusion one way or the other on its merits, instead of functioning in such mechanical manner by rejecting the application filed by the appellant and, thereafter, forwarding it to the Central Government with its adverse recommendations. This aspect of the matter ought to have been noticed by the writ court in the writ petition as well

as the writ appeal. Since that has not been done, the Apex Court held that the impugned judgment and order in W.A.No.671 of 2013 dated 27.05.2013 cannot be sustained. Accordingly, while allowing the appeal, the Apex Court directed the Council to register the application for the academic year 2013-2014 and thereafter, proceed with the matter on its merits in accordance with Act and Rules thereto, within 15 day's time from the date of order. It was also ordered that the higher authority, after receipt of the recommendations made by the Council, will act upon such recommendations and pass appropriate orders in accordance with law, as expeditiously as possible, at any rate within a month's time from the date of order.

21. In **Royal Medical Trust v. Union of India [(2015) 10 SCC 19]** the Apex Court noticed that, Section 10A of the Indian Medical Council Act, 1956 contemplates submission of a scheme to the Central Government in prescribed form, which scheme is then to be referred by the Central Government to the Medical Council of India for its appropriate recommendations. The scheme is to be considered having regard to the features referred to in sub-section (7) and is then placed before the Central Government along with the recommendations of the Council. In exercise of powers

conferred by Section 10A read with Section 33 of the Act, the Medical Council of India with the previous sanction of the Central Government has made the Establishment of the Medical College Regulations, 1999 which was published in the Gazette of India on 28.08.1999. Para.3 lays down that no person shall establish a medical college except after obtaining prior permission of the Central Government by submitting a scheme. The Regulations then deal with the scheme in extenso. Clauses 1 and 2 of the scheme deal with 'eligibility criteria' and 'qualifying criteria' respectively. Clause 3 then sets out certain requirement in parts (i), (ii) and (iii) concerning various details about the status of the applicant in terms of the eligibility criteria, name and address of the medical college including various facets of the infrastructure and planning and the details of the existing hospital including availability of various facilities and capacities as also upgradation and expansion programme. Para.7 of the Regulations deals with report of the Medical Council of India, while Para.8 deals with grant of permission by the Central Government. The Schedule to the Regulations sets out various stages dealing with processing of applications preferred by the medical colleges and how the matter

is to be dealt with at various stages, which has undergone changes over a period of time. The Regulations were further amended by Amendment Notification dated 21.09.2012, which was published in the Gazette of India on 01.10.2012. It substituted the Schedule and added a Note. As per the Note, the time schedule indicated Schedule may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.

22. In **Royal Medical Trust** the Apex Court held that, the Medical Council of India and the Central Government have been vested with monitoring powers under Section 10A of the Indian Medical Council Act, 1956 and the Establishment of the Medical College Regulations, 1999. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. The Medical Council of India and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. The Schedule must ideally take care of:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the Medical Council of India. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the Medical Council of India to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the Medical Council of India must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the Medical Council of India must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the Medical Council of India and the Central

> Government. In cases where actual physical verification is required, the Medical Council of India and the Central Government must cause such verification before the deadline.
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> (E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

23. In **Royal Medical Trust**, on the facts of the cases in hand, the Apex Court noticed that, the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta it did exercise that power in favour of Government Medical Colleges. The decision of this Court in **Priya Gupta v. State of Chhattisgarh [(2012) 7 SCC 433]** undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central

Government has been considered by the Court in **Priyadarshini Dental College and Hospital v. Union of India [(2011) 4 SCC 623]**. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of the subsequent amendment and incorporation of Note as aforesaid, the matter is required to be seen in the light of and in accord with **Priyadarshini** where similar Note in pari materia Regulations was considered by the Court. The Apex Court held that the directions in **Priya Gupta** must now be understood in the light of such statutory empowerment and the Apex Court declared that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by the Court in **Medical Council of India v. Madhu Singh [(2002) 7 SCC 258]** and **Mridul Dhar v. Union of India [(2005) 2 SCC 65]** must always be observed.

24. In **Royal Medical Trust**, the challenge was against the communications issued by the Central Government recommending disapproval of applications made in respect of the medical colleges of the applicants, for the academic year 2014-2015, for

establishing new medical colleges/for increase of admission capacity MBBS course/renewal of permission granted in the previous academic year. After conducting inspection of the respective medical colleges the Medical Council of India had found infirmities or inadequacies in the infrastructure, facilities and faculty. The respective applicants then claimed that they had rectified the shortcomings and asked for compliance verification. But the Central Government and/or the Medical Council of India refused to undertake any fresh inspection for verification, for want of adequate time. In so far as the initial assessment of the application is concerned, the Apex Court has stated in categorical terms, in Para.31 of the judgment in **Royal Medical Trust** [@ page 47 SCC] that, the initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

25. In **D.Y. Patil Medical College v. Medical Council of India [(2015) 10 SCC 51]**, in the context of the qualifying

criteria prescribed in the Medical Council of India Opening of New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and Increase of Admission Capacity in Any Course of Study or Training (Including Postgraduate Course of Study or Training) Regulations, 2000 and also the Time Schedule prescribed in the Medical Council of India Establishment of New Medical College Regulations, 1999, the Apex Court held that, it is apparent from the decisions in **S.R.M. Institute of Science and Technology [(2004) 9 SCC 676]**, **Educare Charitable Trust [(2013) 16 SCC 474]** and **Royal Medical Trust [(2015) 10 SCC 19]** and the Regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. In **D.Y. Patil Medical College** the Apex Court was dealing with a case in which the application for increase of admission capacity was admittedly incomplete when it was filed. Though there is a dispute whether it was filed before 31.08.2014, it was submitted on behalf of the Medical Council of India that it was filed on 02.09.2014. The Apex Court observed that, even assuming that it was filed before 31.08.2014, admittedly it was an incomplete application as the essentiality certificate issued by the

Government of Maharashtra was not enclosed along with the application form, due to which application came to be rejected and delay has taken place for which the petitioner has to blame itself.

26. In **Medical Council of India v. V.N. Public Health and Education Trust [(2016) 11 SCC 216]** the Apex Court reiterated the law laid down in **D.Y. Patil Medical College [(2015) 10 SCC 51]**, **Educare Charitable Trust [(2013) 16 SCC 474]** and **Royal Medical Trust [(2015) 10 SCC 19]**. The Apex Court noticed that, in **D.Y. Patil Medical College** the controversy had arisen due to rejection of the application of the institution on the ground that essentiality certificate was not filed along with the application form. The Court dwelled upon the principles stated in **Educare Charitable Trust** and **Royal Medical Trust** and various other decisions and, after analysing the scheme of the Act held that, the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision making process. On the facts of the case on hand, the Apex Court noticed that, the application for grant of approval was filed with the essentiality certificate which was a conditional one and, therefore, a defective one. It was not an

essentiality certificate in law. In such a situation, the High Court could not have directed for consideration of the application for the purpose of the inspection. Such a direction runs counter to the law laid down in **Educare Charitable Trust** and **Royal Medical Trust**. On the date of the application, the essentiality certificate was not in order. The Schedule prescribed by the Medical Council of India, which had been approved by the Court, is binding on all concerned. The Medical Council of India cannot transgress it. The High Court could not have gone beyond the same and issued any direction for conducting an inspection for the academic year 2016-17. Therefore, the Apex Court held that, the directions issued by the learned single Judge and the affirmation thereof by the Division Bench are wholly unsustainable.

27. 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 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 for affiliation. In that writ petition the prayer for interim relief against refusal to grant consent for 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 for 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 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 for 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 for affiliation are produced. Apart from that, pursuant to the refusal to grant consent for 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 for 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 for 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 for 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 for affiliation does not follow automatically. They have to be considered as per prevailing norms. The Apex Court noticed that the filing of third writ petition being W.P.(C)No.34275 of 2019 was uncalled for. No interim order could have been passed, giving final relief and that too on an impermissible basis.

28. In **Kerala Private Medical College Management**

Association v. Medical Council of India [W.A. No. 1346 of 2020 - Judgment dated 15.10.2020] the Division Bench of this Court was dealing with an appeal preferred by the writ petitioner in W.P.(C) No. 15607 of 2020, challenging the judgment of the learned Single Judge dated 16.09.2020, whereby that writ petition was dismissed holding that the application submitted by the members of the appellant association was not liable to be considered by the Medical Council of India, after the extended cut off date of 31.08.2020 and therefore, there is no requirement to direct the Kerala University of Health Sciences to consider the application submitted by the members of the appellant association for issue of consent of affiliation, for the academic year 2021-22. The Division Bench noticed that, the learned Single Judge after taking into account the submissions made by rival parties and taking into account the statement filed by the University has found that the schedule fixed by the Medical Council of India is guided by the direction of the Apex Court. Therefore, it is only those colleges, which have been able to submit the applications complete in all respects would be entitled to the benefit of extensions granted by the Medical Council of India and therefore, it was held that the

reliefs sought for by the writ petitioner are against the directions of the Apex Court and as also the time line prescribed by the Medical Council of India. It is an admitted fact that, as per Ext.P2 public notice the Secretary General of the Medical Council of India informed that those colleges, who wish to apply for starting/increase of seats in Post Graduate courses under Section 10A of the Indian Medical Council Act, for the academic year 2021-22, are required to be submit application to the Secretary General, Medical Council of India, from 16.03.2020 to 07.04.2020 in the prescribed format. Ext.P2 public notice was issued on the basis of Ext.P3 amendment notification dated 04.04.2020 issued by the Board of Governors, in supersession of Medical Council of India, in exercise of the powers conferred under Section 33 of the Indian Medical Council Act, with the previous sanction of the Central Government, amending the MCI Regulations. The appellant has no case that the member colleges have submitted any application or has received the consent of affiliation from the University at any time before the finally extended time of 31.08.2020. Therefore, there was no deficiency on the part of the Medical Council of India/Board of Governors to consider any application or were

bound to receive any application without the required documents. It is also clear from Exts.P2, P3 and P5 and further extension made upto 31.08.2020 that, the Medical Council of India/Board of Governors were not at liberty to receive any application after the cut off date. In that view of the matter, no manner of directions can be issued to the Medical Council of India, as sought for in the writ petition, to accept and process the applications preferred without the supporting documents as envisaged in Ext.P2 guidelines. It was purely on the basis of Ext.P2 public notice dated 13.03.2020 applications were invited for the academic year 2021-22, which thus means the public notice was issued only inviting applications for the academic year 2021-22. Therefore, the contention put forth by the learned counsel for the appellant that a direction can be issued to the University to process the applications of the members of the appellant association enabling the member colleges to pursue the matter before the Medical Council of India/Board of Governors, cannot be sustained since the cut off date fixed by the Medical Council of India was over by 31.8.2020. Accordingly there was no reason for the writ court to issue any such direction to the University to consider applications submitted

by the member colleges. If any direction as sought for by the appellant is granted, it would go against the spirit of Ext.P2 guidelines issued by the Medical Council of India/Board of Governors since the applications were invited only for the academic year 2021-22. Taking into account all the above aspects, the Division Bench declined interfere with the judgment of the learned Single Judge in the intra court appeal filed under Section 5 of the Kerala High Court Act.

29. In view of the law laid down by the Apex Court in **S.R.M. Institute of Science and Technology [(2004) 9 SCC 676]**, **Educare Charitable Trust [(2013) 16 SCC 474]**, **Royal Medical Trust [(2015) 10 SCC 19]**, **D.Y. Patil Medical College [(2015) 10 SCC 51]** and **V.N. Public Health and Education Trust [(2016) 11 SCC 216]**, an application made by a medical college/institution for opening a new or higher course of study or training (including a postgraduate course of study or training) can be entertained only if that application is supported a consent of affiliation in the prescribed format obtained by the medical college/institution from the University to which it is affiliated. Applications found complete in all respects shall be

registered for evaluation and recommendations. If the medical college/institution fails to fulfill the qualifying criteria, the application, on the face of it would be incomplete, which cannot be entertained for evaluation and recommendations, in view of the law laid down by a Three-Judge Bench of the Apex Court in **V.N. Public Health and Education Trust** [Civil Appeal Nos. 2920 of 2020 and 2921 of 2020]. Therefore, the 3rd respondent National Medical Commission cannot be directed to consider the applications submitted by the petitioner for commencement of new PG medical courses/for increase of intake in PG medical courses, for the academic year 2021-22, which are not supported by consent of affiliation granted by the 4th respondent University before 15.12.2020.

30. The learned counsel for the petitioner would contend that, in view of the direction contained in Ext.P1 judgment of this Court in W.P.(C)No.14835 of 2019, the 3rd respondent National Medical Commission has to consider the applications made by the petitioner for increase of intake in MD Community Medicine; MS General Surgery; MS Otorhinolaryngology; and MD Paediatrics without insisting consent of affiliation from the 4th respondent

University.

31. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145]**, a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.

32. In **Oriental Bank of Commerce v. Sunder Lal Jain [(2008) 2 SCC 280]** the Apex Court held that in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed that the principles on which a writ of mandamus can be issued have been stated in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive,

specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

33. **In State of U.P. v. Harish Chandra [(1996) 9 SCC 309]** the Apex Court held that under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law.

34. In **Bhaskara Rao A.B. v. CBI [(2011) 10 SCC 259]** the Apex Court reiterated that, generally, no court has competence to issue a direction contrary to law nor can the Court direct an authority to act in contravention of the statutory provisions. The Courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected

by law.

35. Therefore, it is well settled that, no mandamus can be issued under Article 226 of the Constitution of India, directing an authority to act in contravention of the statutory provisions. In terms of the directions contained in Ext.P1 judgment of this Court in W.P.(C)No.14835 of 2019, the 4th respondent University considered the request of the petitioner for consent of affiliation for increase of intake in PG medical courses and granted Exts.P4, P4(a), P4(b), P4(c) and P4(d) consent of affiliation for increase of intake in 5 PG medical courses, for the academic year 2021-22. The petitioner did not challenge the decision of the University, while issuing Exts.P4, P4(a), P4(b), P4(c) and P4(d) consent of affiliation for increase of intake, only for 5 PG medical courses. In the absence of consent of affiliation obtained from the 4th respondent University before 15.12.2020, for increase of intake in MD Community Medicine; MS General Surgery; MS Otorhinolaryngology; and MD Paediatrics, the 3rd respondent National Medical Commission cannot be directed to entertain the applications made by the petitioner for increase of intake in the aforesaid 5 PG medical courses, for the academic year 2021-22.

In the above circumstances, the petitioner is not entitled for any of the reliefs sought for in this writ petition. The writ petition fails and the same is accordingly dismissed. No order as to costs.

Sd/-
ANIL K. NARENDRAN
JUDGE

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APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE JUDGEMENT IN WPC.14835/2019 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 4.3.2020.**
EXHIBIT P2	**TRUE COPY OF THE LETTER NO.12181/REGR S OFFICE/KUHS/2020 DATED 24.7.2020.**
EXHIBIT P3	**TRUE COPY OF THE INTERIM ORDER IN WP(C) NO.18931/2020 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 15.9.2020.**
EXHIBIT P4	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020ACI/MED/A3/KUHS/B ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSES IN MS ORTHOPAEDICS DATED 17.8.2020.**
EXHIBIT P4(A)	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020/ACI/MED/A3/KUHS/A ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSES IN MD PAEDIATRICS DATED 17.8.2020.**
EXHIBIT P4(B)	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020/ACI/MED/A3/KUHS/A ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSES IN MD DERMATOLOGY VENEROLOGY AND LEPROSY DATED 27.8.2020.**
EXHIBIT P4(C)	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020/AC1/MED/A3/KUHS/D ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSES IN MD GENERAL MEDICINE DATED 27.8.2020.**
EXHIBIT P4(D)	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020/AC1/MED/A3/KUHS/B ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSE IN MS OPTHALMOLOGY DATED 27.8.2020.**

EXHIBIT P4(E)	**TRUE COPY OF THE CONSENT OF AFFILIATION (COA)NO.5083/2020/AC1/MED/A3/KUHS/C ISSUED BY THE FOURTH RESPONDENT UNIVERSITY FOR THE COURSES IN MD ANAESTHESIOLOGY DATED 27.8.2020.**
EXHIBIT P5	**TRUE COPY OF THE REPRESENTATION NO.MMC&RC/NMC/PG/10/2020 DATED 5.10.2020.**
EXHIBIT P6	**TRUE COPY OF THE REMINDER NO.MMC&RC/NMC/PG/10/2020 DATED 22.10.2020.**
EXHIBIT P7	**TRUE COPY OF THE EMAIL DATED 19.11.2020.**
EXHIBIT P8	**TRUE COPY OF THE EMAIL COMMUNICATION DATED 23.11.2020 ISSUED BY THE 4TH RESPONDENT TO PETITIONER.**
EXHIBIT P9	**TRUE COPY OF THE LETTER NO.MMC&RC/NMC/11/2020 DATED 24.11.2020.**
EXHIBIT P10	**TRUE COPY OF THE LETTER NO.MMC&RC/NMC/PG/11/2020 DATED 27.11.2020.**
EXHIBIT P11	**TRUE COPY OF THE LETTER NO.MCI/NMC(PG)452/22)2019-MED/125159-60 DATED 07/12/2020 ISSUED BY THE 3RD RESPONDENT.**
EXHIBIT P12	**TRUE COPY OF THE INTERIM ORDER IN 24021/2015 DATED 31/08/2015.**

RESPONDENTS' EXHIBITS:NIL