

**WRIT PETITION No: 4484 of 2019 along with W.P.
Nos.2212, 5949, 6748, 7619 of 2019 & 22536 of 2024****W.P. No.4484 of 2019**

Srinivasa Educational Academy and Others

...Petitioner(s)

Vs.

The State Of AP and Others

...Respondent(s)

Advocate(s) for Petitioner(s):

Mr. P. Sri Raghu Ram, Senior
Counsel, appearing vice Mr. Patanjali
Pamidighantam

Advocate(s) for Respondent(s):

Mr. Vivek Chandra Sekhar S, for NMC;
Mrs. S. Pranathi, Special Government
Pleader**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R RAGHUNANDAN RAO****DATE : 26.05.2025****Per DHIRAJ SINGH THAKUR, CJ:**

W.P. No.4484 of 2019 has been filed challenging the action of the Government in cancelling the Essentiality Certificate, which was issued on 30.09.2013, in favour of the petitioner for establishment of a medical college in the name and style of 'RVS Institute of Medical Sciences' in Chittoor District, by its order, dated 27.03.2019.

W.P. No. 2212 of 2019 has been filed challenging the letter, dated 05.02.2019, issued by the Special Chief Secretary, wherein the petitioner was called upon to show cause as to why the Essentiality Certificate should not be cancelled.

W.P. No. 7619 of 2019 has been filed challenging the proceedings, dated 20.05.2019, issued by the Board of Governors (in supersession of MCI) treating the petitioner institution as a closed medical college and requesting further action, as arbitrary, illegal.

W.P. No. 6748 of 2019 has been filed challenging the letter, dated 08.05.2019, issued by the Medical Council of India (for short, "MCI"), rejecting the petitioners' request for annual inspection of their Medical College, as arbitrary and illegal.

W.P. No. 5949 of 2019 has been filed challenging the condition imposed in proceedings, dated 03.12.2018, issued by MCI, making withdrawal of the Essentiality Certificate a prerequisite for adjusting students.

Aggrieved of the orders passed in appeal upholding the order of disapproval, dated 04.07.2024, recorded by the National Medical Commission (for short, "NMC"), writ petition bearing No. 22536 of 2024 has been filed.

2. The regulation of medical education in the country was earlier governed by the Indian Medical Council Act, 1956 (hereinafter referred to as “the Act”). However, with effect from 26.09.2018, the Board of Governors was appointed in supersession of the MCI. Subsequently, after coming into effect of the NMC Act, 2019, on 25.09.2020, the NMC replaced the Board of Governors as the Apex regulatory body.

3. The Indian Medical Council Act, 1956, *inter alia* deals with the issue of establishment of a new medical college. Regulations have been framed in terms of Section 10A r/w Section 33 of the Indian Medical Council Act, 1956, and are called “the Establishment of Medical College Regulations, 1999”.

4. Section 10A of the Act *inter alia* envisages that no person shall establish a medical college except with the previous permission of the Central Government. Section 10A(2) of the Act envisages that for purposes of obtaining permission under Section 10A(1), a scheme shall have to be submitted to the Central Government and that the Central Government shall refer the scheme to the council for its recommendations. The scheme to be submitted to the Government has to be submitted in a prescribed form i.e., Form-I, as per regulations, which have been framed in accordance with the powers conferred under Section 10A r/w 33 of the Act.

According to the regulations, in particular, regulation No.3, an Essentiality Certificate in Form-2 is required reflecting no objection of the

State Government/Union Territory for establishment of the proposed medical college at the proposed site.

For purposes of clarity, regulation 3 of 1999 is reproduced hereunder:

“3. The establishment of a medical college – No person shall establish a medical college except after obtaining prior permission from the Central Government by submitting a Scheme annexed with these regulations.”

5. It appears from the record that the Essentiality Certificate was issued in favour of the petitioner. The contents whereof read as under:

Sl. No.		State Figures	
		<u>Private</u>	<u>Government</u>
1	No. of institutions already/existing in the State	26	14
2	No. of seats available or No. of doctors being produced	3550	2050
3	No. of doctors registered with the State	64718	
4	No. of doctors in Government service	13,015	
5	No. of Government posts vacant and those in rural / difficult areas	1987	
6	No. of doctors registered with Employment exchange	Not available	
7	Doctor population ratio in the State	60: 1 lakh	
8	How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State	The No. of qualified doctors will increase year-wise and a better doctor/population ratio can be achieved	
9	The restrictions. imposed by the State Government, if any, on students who are not domiciled In the State from obtaining admissions in the State be specified	As per the regulations of Dr. NTR University of Health Sciences, Vijayawada	
10	Full justification for opening of the proposed college	To increase doctor/population ratio	
11	Doctor - patient ratio proposed to be achieved	1:1,000	
12	RVS institute of Medical Sciences, being run by Srinivasa Educational Academy, R.V.S. Nagar, Tirupathi Road, Chittoor District, AP. has applied for establishment of Medical College under the name and style of R.V.S. Institute of Medical Sciences at R.V.S. Nagar Muttarevulu Villagem Rutalapattu Mandal, Chittoor District with an intake capacity of 150 seats per annum in the MBBS Course.		

A careful consideration of the proposal the Government of Andhra Pradesh have decided to issue Essentiality Certificate to the applicant for the establishment of Medical College with an intake capacity of 150 seats per annum.

It is certified that:

The applicant owns Ac.20 acres of land and manages a 362 bedded hospital.

b) It is desirable to establish a Medical College at R.V.S. Nagar Tirupathi Road, Chittoor District in public interest.

c) Establishment of Medical College at R.V.S. Nagar Tirupathi Road, Chittoor District is feasible.

d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the Medical College as per MCI norms and fresh admissions are stopped by the Central Government, that State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.”

6. Although the Essentiality Certificate was issued in the year 2013, yet the application for permission to establish the medical college was made much later when for the first time, the application, dated 31.08.2015, to that effect was received by the NMC (hereinafter referred to as “National Medical Commission”) *vide* Central Government communication, dated 14.09.2015, under Section 10A of the Act for the academic year 2016-17. An assessment for grant of Letter of Permission was conducted on 06/07.01.2016, which assessment was considered by the Executive Committee of the MCI in its meeting held on 30.01.2016, wherein it was noted that there was a deficiency of 96.9% as regards the faculty as also a deficiency of 97.8% in regard to residents and also deficiency in teaching beds. Apart from this, the following deficiencies were also found:

- “4. OPD attendance was only 35 on day of assessment which is grossly inadequate.
5. Bed Occupancy is 02% on day of assessment.
6. Radiological & Investigative workload is grossly inadequate.

7. Casualty: Separate Casualty for O.G is not available.
8. Central Clinical laboratory: Separate sections are not available.
9. ICUs: ICCU & ICUs are yet to be made functional.
10. Labour Room is under construction.
11. OPD: Minor O.T. is yet to be furnished Special clinics in Pediatrics & OG OPD are not available
12. Audiometry & Speech thereby are not equipped.
13. Blood Bank is not available
14. ETO Sterilizer is not available
15. MRD: ICD X classification of diseases is not followed for indexing.
16. Nursing staff: only 89 Nurses are available against requirement of 175.
17. Paramedical & Non-teaching staff: 94 paramedical & Non-teaching staff are available against requirement of 100.
18. College building is under construction.
19. College Council, Pharmacovigilance Committee are not constituted.
20. Lecture Theaters: They are under construction.
21. Central Library is under construction.
22. Students', Residents' & Nurses' Hostels are under construction.
23. Residential Quarters are under construction.
24. Gender Harassment Committee as required by order of Hon'ble Supreme Court is not constituted.
25. Website: it is not available.
26. Preclinical departments of Anatomy, Physiology, Biochemistry are under construction.
27. Other deficiencies as pointed out in the assessment report."

The Executive Committee of MCI appears to have taken the following decision:

"The Executive Committee of the Council further decided to seek an explanation from the Secretary(ME) of Andhra Pradesh as to how the Essentiality Certificate had been issued when the Hospital does not have the requisite number of beds as per the Establishment of Medical College Regulations, 1999".

7. The decision of the Executive Committee was communicated to the Central Government *vide* Medical Council's communication, dated 31.01.2016. The Central Government *vide* its communication, dated 26.05.2016, accordingly disapproved the application of the college for the academic year 2016-17.

Meanwhile, it appears that based on the directives issued by the Supreme Court Mandated Oversight Committee, dated 13.06.2016, the

Government of India, Ministry of Health, Family & Welfare, approved the establishment of medical college at Chittoor with an annual intake of 150 MBBS seats for the academic year 2016-17 subject to the conditions prescribed in the communication, dated 20.08.2016, issued by the Government of India, Ministry of Health & Family Welfare.

8. The permission granted in favour of the petitioner was accorded initially for a period of one year and was required to be renewed on an yearly basis subject to the verification of the achievement of annual targets as indicated in the scheme submitted by the petitioner. The process of renewal of permission would continue till such time as the establishment of medical college and expansion of hospital facilities were completed and formal recognition of the medical college was granted.

The petitioner claims that it established the medical college for the academic year 2016-17 after fulfilling all the eligibility conditions and criteria in terms of the MCI regulations. Students are said to have been admitted to the said college who appeared for the first year examination and were promoted to the second year.

9. According to the stand of the MCI, a communication was received from the Oversight Committee *vide* its communication, dated 23.09.2016, whereby a decision had been taken by the Oversight Committee to conduct the assessment of the college where conditional approval was accorded by the

said Committee to Undergraduate/Super Specialty courses for 2016-17. An assessment then is stated to have been carried out on 06/07.01.2017 by the MCI and an inspection report, dated 07.01.2017, prepared.

10. The Executive Committee in its meeting held on 13.01.2017 noted the following deficiencies:

- i. Deficiency of faculty is 56.92 % as detailed in the report.
- ii. Medical Superintendent reached college at 5 p.m. on the first day of assessment.
- iii. Most faculty & Residents although working for 2-3 months could not produce tangible evidence like Bank passbook, credit into account, etc.
- iv. Shortage of Residents is 56.52 % as detailed in the report.
- v. OPD attendance was only 35 on day of assessment against requirement of 600. There was not even one patient in any OPD at 10 a.m. No staff was present in OPD/Reception area/Registration area.
- vi. Bed Occupancy is 16 % at 10 a.m. on day of assessment as under:

#	Department	Beds	
		Available	Occupied
1	General Medicine	72	25
2	Pediatrics	24	00
3	Tb & Chest	08	00
4	Psychiatry	08	00
5	Skin & VD	08	00
6	General Surgery	90	04
7	Orthopedics	30	16
8	Ophthalmology	10	02
9	ENT	10	00
10	OG	40	01
	Total	300	48

- vii. There was NIL Major & NIL Minor Operation on day of assessment. O.T. list is not available.
- viii. Radiological workload was only 2 X-rays. There was no Sonography.
- ix. Laboratory investigation workload is grossly inadequate.
- x. Histopathology & Cytopathology workload is NIL.
- xi. There is no record of any Birth or Death. MRD could not produce any data of such record being submitted to Govt. authorities.
- xii. O.T.: NIL Minor O.T. is available.
- xiii. ICUs: There was NIL patient in ICCU or any ICU.
- xiv. Labour Room: Septic Labour room and Eclampsia room are not available.
- xv. Only 1 USG machine is available against requirement of 2.
- xvi. Blood Bank: it is not available.
- xvii. Pharmacy data are inflated.
- xviii. CSSD was locked at the time of taking round.
- xix. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.

- xx. OPD: Injection room is common for males/females. Minor Q.T. is not available. Dressing room is common for males/females. Minor Procedure room is not available in Ophthalmology OPD.
- xxi. Audiometry room is not equipped. Speech Therapy is not available:
- xxii. Lecture Theaters: Audiovisual aids are not available. E class facility is not available.
- xxiii. Central Library: It is not air-conditioned. Students' Reading room (Outside), Students' Reading room (Inside), Staff Reading room are not available.
- xxiv. Central Photography Section is not available.
- xxv. Students', Residents' & Nurses' Hostel are not available.
- xxvi. Residential Quarters are not available.
- xxvii. Common Rooms for Boys & Girls are not available."

Based upon the report which was communicated to the Central Government as also a copy whereof was also communicated to the Oversight Committee, the Central Government *vide* communication, dated 09.06.2017, communicated its decision to the petitioner that it was debarred from admitting the students for two academic years i.e., 2017-18 and 2018-19 and also authorized the MCI to encash the Bank guarantee of rupees two crores.

11. The petitioner challenged the decision of the Central Government and the MCI before the Supreme Court, which directed the Central Government to consider afresh the material on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner. It was also ordered that the petitioner would be afforded an opportunity of being heard. It is stated that the Central Government, by virtue of its order, dated 10.08.2017, reiterated its earlier decision to debar the college from admitting the students for two academic years 2017-18 and 2018-19 and also reiterated its order to encash the Bank guarantee of rupees two crores.

12. It appears that the matter was again taken to the Supreme Court by way of W.P.(Civil) No.533 of 2017 in which the Apex Court issued directions to the MCI to conduct fresh inspection within the time scheduled for the academic year 2018-19 and if any deficiencies were found, to communicate the same to the petitioner as also afford an opportunity to remove the same as per regulations. The directions so issued are reproduced hereunder:

“Having heard learned counsel for the parties, we are of the considered opinion that the Medical Council of India shall conduct fresh inspection within the time schedule for the academic year 2018-19 and if any deficiencies are found the same shall be intimated to the petitioner who shall also be afforded the opportunity to remove the same as per regulations. After the deficiencies are removed, the Letter of Permission would be granted by the competent authority. Before any final decision is taken the Central Government shall consider the Oversight Committee that has been constituted as per the Constitution Bench decision in W.P. (C) No. 408 of 2017 titled as "Amma Chandravati Educational and Charitable Trust & Ors. vs. Union of India & Anr." rendered on 18th July, 2017. Needless to say the Medical Council of India shall do the needful in a time bound manner so that the petitioner-institution does not feel aggrieved that his case is not considered for the academic year 2018-2019. The bank guarantee which has been deposited shall not be encashed and be kept alive.”

13. An assessment was yet again conducted by the MCI pursuant to the orders of the Apex Court to assess the physical and other teaching facilities for renewal of permission, admission of third batch of 150 MBBS students for the academic session 2018-19. The assessment report was considered by the Executive Committee of the Council in its meeting held on 14.12.2017 wherein it was observed that:

“ The Executive Committee of the Council considered the assessment report (17th and 18th November, 2017) carried out in compliance of the Order dated 22.09.2017 passed by the Hon'ble Supreme Court in Writ Petition (c) No. 533/2017 filed by Srinivasa Educational Academy - Vs - Union of India &Anr., and noted the following:-

1. Deficiency of faculty is 68% as detailed in the report.

2. Shortage of Residents is 100 % as detailed in the report.
3. At 10 a.m., NIL Doctors, other staff & patients were seen in OPD.
4. OPD attendance upto 2 p.m. on day of assessment was only 63 against requirement of 750.
5. Bed Occupancy at 10 a.m. on day of assessment was 02 %.
6. O.T. list for the day was not available.
7. There was only 1 Major & NIL Minor Operation on day of assessment.
8. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment.
9. Laboratory & Radiological investigations are grossly inadequate.
10. Blood Bank is not functional.
11. OPD: Injection room is common for males/females. Dressing room is common for males/females. Plaster room & Plaster Cutting room are not separate. Minor O.T. is not available. Dressing room is not available in Ophthalmology OPD.
12. Audiometry & Speech Therapy are not equipped.
13. Wards: Ancillary facilities are not available in any ward.
14. Casualty: Separate Casualty for O.G. is not available. Disaster Trolley & Crash Cart are not available.
15. O. T.s: 4 Major O.T.s are available against requirement of 5. NIL Minor O.T. is available against requirement of 2.
16. ICUs: There was NIL patient in ICCU or any ICU. All the ICUs are not yet functional.
17. Labour room: Eclampsia room is not available.
18. Radiodiagnosis department: 1 Mobile X-ray machine is available against requirement of 2. 1 Static X-ray machine is available against requirement of 3. 1 USG machine is available against requirement of 2.
19. CSSD: It was locked at time of visit. Receiving & Distribution points are not separate.
20. Central Research Laboratory is not available.
21. MRD: There is no record of Birth & Death in the hospital. Data submitted to Government Authorities in this regard could not be produced either.
22. Examination Hall: None available against requirement of 2.
23. Lecture Theaters: 2 Lecture Theaters are available against requirement of 3. Audiovisual aids are not available. Hospital Lecture Theater is not available. E class facility is not available.
24. Central library: It is not air-conditioned. Students' reading room (Outside) & Students' Reading room (Inside) are not separate. Staff reading room is not available. Available books are 3,850 against requirement of 4,000. 20 Journals are available against requirement of NIL Internet Nodes are available.
25. Central Photography section is not available.
26. Students' Hostels: They are not available. They are accommodated in Engineering College campus 1 km. away.
27. Residents' Hostel is not available.
28. Nurses' Hostel is not available.
29. Residential Quarters: NIL Residential quarters are available in the campus.
30. Anatomy department: Only 1 cadaver is available.
31. Pathology department: Practical laboratories, Museum are not functional. Demonstration room is not available.
32. Microbiology department: Practical laboratory, 7 Service Laboratories, Media Preparation facility, Museum are not functional. Demonstration room is not available.
33. Pharmacology department: Practical laboratories, Museum are not functional. Demonstration room is not available.

34. Forensic Medicine department: Practical laboratory, Museum, Autopsy room are not functional. Demonstration room is not available. Cold Storage is not available.
35. Community Medicine department: Practical laboratory, Museum are not functional. Demonstration room is not available.
36. RHTC: It is not functional.
37. UHC: It is not functional.
38. Dean's office: Staff room & College Council hall are not available:
39. Other deficiencies as pointed out in the assessment report."

The Executive Committee noted that Regulation 8(3)(1)(a) of the Establishment of Medical College Regulation (Amendment) 2010 (Part II), dated 16th April, 2010 and amended on 18th March, 2016 provides as under:

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch)

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain etc), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/renewal of permission in that Academic Year."

14. Based on their decision of the Executive Committee, the Central Government *vide* its order, dated 31.05.2018, decided not to renew the permission for the session 2018-19. Needless to say the order of the Government of India was passed after affording an opportunity of being heard to the college before a Personal Hearing Committee constituted for that purpose on 19.01.2018. The Hearing Committee after considering the submissions and the compliance furnished by the college, had observed as under:

"High order deficiency of faculties, residents, bed occupancy and infrastructure has been pointed out. The college has not denied them, recommendation of MCI for disapproval may be accepted".

15. It also appears from the record that those students who had undertaken admission in the petitioner college had approached the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh

seeking their relocation to the Government medical colleges as they claimed that the medical college of the petitioner lacked basic facilities and infrastructure.

Directions were issued by the High Court, pursuant to which based upon the communication, dated 13.11.2018, received from the Special Chief Secretary to Government, it appears from the record that the Assistant Secretary of the Board of Governors (in supersession of Medical Council of India) replied as under:

“In this regard, your kind attention is invited to the revised Essentiality Certificate dated 30.09.2013 issued by the Govt. of Andhra Pradesh. In the said certificate, it is certified that in case the applicant fails to create infrastructure for the Medical College as per MCI 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 above, you are requested to convey your decision with regard to withdrawal of the Essentiality Certificate for further consideration in respect of reallocation of the students from RVS Institute of Medical Sciences, Muthirevula Village, RVS Nagar, Tirupati Road, Chittoor District to other medical colleges of the State.”

16. It appears that the Board of Governors then did accept the proposal of the Government of Andhra Pradesh to adjust 150 students in eleven Government medical colleges by increasing their strength as a one-time exception for purposes of such adjustment only.

Another communication, dated 08.02.2019, was issued by the Assistant Secretary of the Board of Governors seeking information regarding the

decision taken by the State Government with regard to the withdrawal of the Essentiality Certificate.

17. The Special Chief Secretary to Government, Health, Medical & Family Welfare Department, appears to have acted on the basis of the communications issued by the Assistant Secretary regarding the decision of the withdrawal of the Essentiality Certificate and by virtue of show-cause notice, dated 05.02.2019, the petitioner was asked to show-cause as to why the Essentiality Certificate be not cancelled/withdrawn on account of the deficiencies which had been pointed out by the Medical Council of India. An explanation was tendered in which the petitioner claimed that no inspection was held by the MCI after November, 2017, even though they had submitted their application form.

The Government then appears to have constituted a Committee for physical verification by a surprise inspection to crosscheck the documentary proofs submitted by the President of the petitioner academy. Based upon the report pursuant to the surprise check, the Government, by virtue of its order, dated 27.03.2019, cancelled the Essentiality Certificate by observing thus:

“ 7) In the ref 10th cited, the Director of Medical Education (Academic) has submitted the inspection report to Government. In its report, it was stated that there is a visible effort from the Administration to improve the construction and making the availability of infrastructure in Pre clinical, Para clinical and Hospital. The Hostels are nearing completion and ready to occupy. The Library, Lecture hall and Examination hall are sufficiently suited to the needs. The staff rooms, Demo halls and Practical halls adequate. In the Hospital, the daily turn out OPD is minimum. The admitted patients are around 35 indicating low bed occupancy. The turn out of Laboratories, Radiology department, Casualty is very low. So the

students are not having any chance to learn in the hospital or in the OT or in Casualty. As they are entering into full clinical years, this low turn out will make them deficient in clinical training. So, they will become less competent to deal with patient care. There is huge deficiency of teaching faculty as well as Residents around 75 to 80 %.

8) Government after careful examination of the matter, hereby cancel the Essentiality Certificate in the ref 1st cited for establishment of RVS Institute of Medical Sciences, issued in favour of the President, Srinivasa Educational Academy, RVS Nagar, Tirupati Road, Chittoor.”

18. The order passed by the Government of Andhra Pradesh cancelling the Essentiality Certificate, dated 27.03.2019, issued earlier in favour of the petitioner was challenged in W.P. No.4484 of 2019. By virtue of interim order, dated 17.04.2019, a Division Bench of this Court was pleased to stay the operation of the order impugned passed by the State Government on the basis of the decision rendered by the Apex Court in **Chintpurni Medical College and Hospital v. State of Punjab**¹.

19. In the case of **Chintpurni Medical College (supra)**, the Apex Court was considering the scope of powers exercisable by the State Government to withdraw the Essentiality Certificate issued by it. Three inspections conducted by the MCI had found that the college was deficient to the extent of 100% and therefore, recommendations were made to the Central Government not to issue the recognition to the petitioner college under Section 11 of the Indian Medical Council Act, 1956.

The argument advanced for the College was that the State Government, having issued the Essentiality Certificate, was not vested with

¹ (2018) 15 SCC 1

the power to withdraw the same. The Apex Court held that the purpose of the Essentiality Certificate was to enable the Central Government acting under Section 10A of the Act to take an informed decision for permitting the opening or establishment of a new medical college and that once the college is established, its functioning and performance and even the de-recognition of its courses was controlled only by the provisions of the Indian Medical Council Act, 1956, which was a legislation under Entry 66 of List-I of Seventh Schedule of the Constitution. It was held thus:

“17. It would be impermissible to allow any authority including a State Government which merely issues an Essentiality Certificate, to exercise any power which could have the effect of terminating the existence of a Medical College permitted to be established by the Central Government. This the State Government may not do either directly or indirectly. Moreover, the purpose of the Essentiality Certificate is limited to certifying to the Central Government that it is essential to establish a Medical College. It does not go beyond this. In other words, 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 this Court to take a contrary view.”

20. In para No.18 of the judgment, the Apex Court drew a distinction between the justified existence of a college and the irregular/illegal functioning of an existing college and held that they belong to different order of things and could not be mixed up. Rejecting the argument made on behalf of the State that the power to issue a certificate carries a power to withdraw the same in a

like manner as contemplated by Section 21 of the General Clauses Act, 1897, the Apex Court held thus:

“26. Section 21 has no application to a certificate since a certificate is neither a notification, nor an order, or rule or bye- law as contemplated by that Section. This Court has on several occasions held that where a statutory authority is enjoined to perform a quasi judicial function such as that of grant of registration to a political party or issue a certificate under the Income Tax Act, Section 21 has no application and confers no power to review such an Act because the party has violated a provision of the constitution of law, vide Indian National Congress (I) vs. Institute of Social Welfare (2002) 5 SCC 685 and Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. vs. Commissioner of Income Tax, Gwalior (2018) 4 SCC 494.”

21. It was also held that the State Government, in according an Essentiality Certificate, must be construed to be discharging a quasi-judicial function and, in that regard, is bound to enquire and determine the existence of several factors like the number of existing institutions, the number of doctors becoming qualified annually, the number of doctors registered with the State Medical Council and employed in Government Service, and the number of doctors registered with employment exchange etc. It further held that the State must also determine the doctor population ratio in the State, doctor - patient ratio to be achieved and the impact of the proposed college on the availability of medical manpower in the State. In that context, held that such a determination could not be construed as an order “contemplated by Section 21 of the General Clauses Act”.

While holding that the power to issue an Essentiality Certificate is a power, which must be treated as exhausted once it is exercised, it was further

clarified that the State would be entitled to withdraw such a certificate where the same was obtained by playing fraud. The Apex Court held thus:

“36. We may not be understood to be laying down that under no circumstances can an Essentiality Certificate be withdrawn. The State Government would be entitled to withdraw such 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.”

22. In **Sukh Sagar Medical College and Hospital v. State of Madhya Pradesh**², the issue that came up for consideration before the Apex Court was whether the State Government had unjustly revoked the Essentiality Certificate granted to Gyanjeet Sewa Mission Trust for establishing a medical college at Jabalpur in the State of Madhya Pradesh, being contrary to the decision of the judgment by the Apex Court in **Chintpurni Medical College**.

After issuance of the Essentiality Certificate, the Trust was granted permission for establishing a medical college on the basis of the Supreme Court Mandated Oversight Committee. The permission was valid for a period of one year and to be renewed on yearly basis.

No renewal of permission was accorded to the said college based upon the MCI reports which indicated that the college had not rectified the deficiencies pointed out by the Inspection Committee of the MCI which were gross and had even jeopardized the academic year of first batch of students admitted to the college for the year 2016-17.

² (2021) 13 SCC 587

23. The three Judge Bench of the Apex Court in **Sukh Sagar Medical College** agreed with the ratio of the judgment rendered in **Chintpurni Medical College** case to the extent that the State, in issuing an Essentiality Certificate, was exercising a quasi-judicial function and that Section 21 of the General Clauses Act, 1897, could not be invoked and further that the State Government was not deprived of its power to revoke or withdraw the Essentiality Certificate in a case where (a) the same was secured by playing fraud on the State Government (b) the substratum for issuing the certificate was lost or disappeared and (c) such like ground, where no enquiry is called for on the part of the State Government. Reliance in this regard is also placed on the view expressed in para No.36 of **Chintpurni Medical College** case and held thus:

“18. ...In other words, we hold that Chintpurni Medical College (supra) does not lay down in absolute terms that the State cannot revoke the Essentiality Certificate once granted for opening of a new medical college within the State. The observations in paragraph 36 of the reported decision also reiterate this position and make it amply clear that in exceptional circumstances referred to therein, the State is free to do so.”

24. The Apex Court further held that since the college had failed and neglected to discharge its commitment given to the State at the time when the Essentiality Certificate was issued and was incapable of fulfilling the minimum norms specified by the MCI for starting and running a medical college, it had thus misrepresented the State at the relevant time by giving hope of ensuring installation of minimum infrastructure as also robust organizational structure

for running a medical college, which was required to be done in a time bound frame.

It thus held that there was constructive fraud played upon the State Government by the Trust, who had failed even after lapse of five years from the date of issuance of the Essentiality Certificate, to secure the requisite permissions from the MCI and the Central Government to run a medical college as per the scheme. The Hon'ble Supreme Court further held:

“25. ... On a comprehensive view of the state of affairs, the fulfillment of MCI norms and other allied conditions must be understood as an implied imperative for the consideration/continuation of Essentiality Certificate. For, there can be no deviation from the standards. This being a clear case of a nonfunctioning college, warranted immediate intervention of the State Government in larger public interest and also because the substratum had disappeared. It would certainly come within the excepted category, where the power of withdrawal of Essentiality Certificate ought to be exercised by the State and more particularly not being a case of an established college per se.”

and finally it was held that on account of the gross deficiencies, the case fell within the excepted category where the State Government ought to act upon and provide a window to some other institute capable of fulfilling the minimum standard/norms specified by the MCI for establishment of a new medical college.

25. The petitioner then appears to have applied again for renewal of Letter of Permission (LoP) for the academic year 2019-20, which, according to the petitioner, was not considered by the Board of Governors apparently due to the issues concerning transfer of students. According to the petitioner, an

effort yet again was made for seeking permission for the academic year 2020-21 and 2021-22. However, insofar as the permission for 2020-21 is concerned, it was rejected, as stated, on account of expiry of consent of affiliation and insofar as the academic year 2021-22 is concerned, the same is stated to have been rejected on the ground of invalidation of Essentiality Certificate and consent of affiliation.

26. It appears that by virtue of notification, dated 17.01.2017, issued by the MCI, form-2 pertaining to Essentiality Certificate was amended. In the interregnum, since the Medical Council of India was insisting on the Essentiality Certificate to be filed in the new format along with the application form filed for seeking LoP, the issue was agitated in the pending petition. Finally, the Government, by virtue of communication, dated 19.05.2023, clarified that the Essentiality Certificate, which was issued earlier, would be deemed to be in force subject to outcome of the writ petition bearing No.4489 of 2019.

27. The NMC, however, insisted that in the absence of Essentiality Certificate as per the revised format, the application for academic year 2023-24 had been disapproved and it was conveyed by its letter, dated 22.06.2023. The basis for rejection was that the Essentiality Certificate was of the year 2013 and not as per the format, which was revised in the year 2017. This forced the petitioner to approach this Court in W.P. No.4484 of 2019 by way of I.A. No.2 of 2023, which was allowed and a direction was issued to the State

Government to issue the Essentiality Certificate in favour of the petitioner Institute in the revised format, which orders were carried out and the certificate came to be issued. Immediately upon receipt of the revised Essentiality Certificate on 10.08.2023, the petitioner claims to have applied for processing the application for new admissions for the academic year 2023-24 to respondent Nos.3 & 4 i.e., the National Medical Commission and Medical Assessment and Rating Board (MARB) respectively.

28. Despite the fact that the case of the petitioner had been disapproved by the MARB, the petitioner, based upon the revised Essentiality Certificate approached the respondents for considering the Essentiality Certificate for grant of permission stating therein that the counseling in the State of Andhra Pradesh had yet to start and therefore, the application could be processed.

In response to the said communication, the Under Secretary, MARB, advised the petitioner that since a decision had already been taken, it could appeal to the NMC or the Central Government against the order of disapproval. An appeal was then filed before the NMC under Section 28(5) of the NMC Act, which was rejected by virtue of order, dated 07.08.2024.

29. A second appeal was preferred under Section 28(6) of the NMC Act to the Government of India, which too came to be rejected holding that since the MBBS and PG Courses counseling timelines were complete, the second appeal could not be considered as it had become infructuous for the academic

year 2023-24 and that the NMC would follow due process for the next academic year 2024-25.

It is not out of place here to mention that NMC did conduct an inspection and submitted a report, dated 22.02.2023, which recorded deficiency of teaching faculty to the extent of only 1.85% and deficiency of resident Doctors as NIL. Insofar as the infrastructure is concerned, the same was recorded as adequate and a similar remark was made in regard to clinical materials also. The affiliating University also appears to have conducted an inspection for purposes of affiliation on 03.06.2023 in which the deficiency of teaching faculty was recorded as 3.70, the deficiency of infrastructure of college and hospital as NIL, apart from showing NIL deficiency as regards the position of senior residents/tutors and clinical materials. The petitioner then applied for LoP for making admissions for the academic year 2024-25 on 24.11.2023.

30. In the meantime, the NMC had framed new regulations called as *“Guidelines for Under Graduate Courses under Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023”*.

The key difference between the regulations of the years 2020 & 2023 as regards faculty requirement, clinical material standards, in-patient attendance and in-patient bed occupancy are reproduced hereinbelow:

Category	2020 Regulations (Minimum Requirements for Annual M.B.B.S. Admissions Regulations, 2020)	2023 Regulations ("Guidelines for Under Graduate Courses under Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023")
Faculty Strength	Faculty: 54-116 Tutor/Demo/SR: 43-76 (Increasing across renewals)	Faculty: 114 Tut/Demo: 32 SR: 58
OPD Attendance (per day)	600-1200 (Increasing across renewals)	1200 per day
Bed Strength	330-600 (Gradual increase with renewals)	605 beds
Bed Occupancy	60–75% (increasing across renewals)	Minimum 80% per annum

31. The NMC then is stated to have conducted an inspection on 27.06.2024 wherein the following deficiencies were found:

- Deficiency of teaching faculty –73.7%
- Deficiency of Tutor/residents/demonstrators - 66%.

Apart from this, the following are the observations recorded by the Inspection Committee:

"Remarks:

* The deficiency of faculty is 73.7% and tutors is 66%.

* Staff quarters are under renovation. Though a few of them are occupied by the students of different streams.

* At 10:40am as per AEBAS there were eight professors, seven Associate Professors, nine Assistant Professor, eight Senior Residents and 41 Tutors/JR. Though later during head counts the faculty reported later were also verified.

* On visit to Radiology department, the verification physical and digital records of X Rays was done and showed a mismatch. Many of requisition forms were incomplete with regards to name of Investigation required, signature and name/stamp of prescribing doctors. On an attempt to verify earlier days data digitally images of the X Rays and Data was not available. The technician said that this could be due to software errors; Similarly, CT scan data was not available for confirmation. CT scan technician and Radiologist were not available to show the data

* Pediatric ward, We interacted with Rimi Thomas on duty sister Informed us that all pediatric patients have arrived today morning i.e. on the assessment day. No pediatrician was available to interact. On interaction with the patients/children in Pediatric ward the most of the children were healthy and playful.

* The duty doctor in ICU was not available and no patients has been admitted in fast 5 days and only one patients was available today.

* Overall the quality of patients admitted in the wards were easily treatable on OPD basis. Further, the diversity in variety of clinical material was missing.

* In female wards the patients themselves revealed that they were brought to the hospital today for preventive health checkup camps though they had no illness.

* Majority of declaration forms were INCOMPLETE specially with regards to point 18 showing emoluments received from the college. While doing head counts some faculty consented to have discrepancies in this regards. In this regards we requested authorities to provide form 16 A /salary slips / evidence of salary payments made but this was not provided. Thought written statements from Account officer of the Institution was given to a few faculty members. This aspect needs to be plaid for its correctness at your end

* During visit to laboratory at 2 PM the work load was assessed and found meager as claimed, Also no laboratory requisition forms/payment receipts and lab reports were available for today's Investigations. and last 3 days workload: Now at 5.30 PM laboratory forms and lab reports of 54 patients has been provided which are enclosed for your perusal."

32. A dissent note is then stated to have been recorded by the Dean of the petitioner college wherein the following remarks were recorded on the report of the Inspection Committee:

" Dean's Dissent note:

1. Our faculty were available as per ABAS data & same were produced for head count. However they were not accepted due to not producing Form-16. As per Income Tax Department, our Institute's Form-16 are not due. As a result we could not produce it. Therefore we request you to kindly accept our ABAS data which is foolproof & transparent.

2. According to annexure FAQ in NMC website question 12, it is acknowledged that tutors & senior residents together are expected to meet the total no. of personnel. The same was not followed.

3. Our declaration forms sent to NMC office in original may be thoroughly verified to check the qualification of our faculty members & TV footage may be verified for clinical material. ”

33. By virtue of communication, dated 04.07.2024, the NMC communicated to the petitioner its disapproval for LoP for the session 2024-25. An appeal was preferred against the decision of the NMC on 04.07.2024 under Section 28(5) of the NMC Act before the National Medical Commission against the decision taken by the Medical Assessment and Rating Board disapproving the proposal of the petitioner.

The first appeal of the petitioner was rejected by virtue of order, dated 07.08.2024. The second appeal preferred under Section 28(6) of the NMC Act was preferred before the Government, which too came to be dismissed by virtue of order, dated 30.09.2024.

34. At this stage, it may be necessary to state that whereas the cancellation of the Essentiality Certificate has been challenged in W.P.No.4484 of 2019, the decision of the appellate authorities confirming the Order of MARB in issuing the Letter of Disapproval for the academic year 2024-25 has been challenged in W.P. No.22536 of 2024.

35. It is in the context of the aforementioned facts that Mr. P. Sri Raghu Ram, learned Senior counsel appearing for the petitioner, urged

that the principles of law as laid down in the case of **Chintpurni Medical College** would be applicable in the present case and not those laid down in the case of **Sukh Sagar Medical College** inasmuch as the instant case was not a case where there was any fraud, which could be attributable either actual or constructive, to the petitioner.

It is stated that even the substratum for the purpose for which Essentiality Certificate had been granted, could not be said to have been lost inasmuch as the petitioner was ready with infrastructure as early as in the year 2019 and it was only on account of the attitude of the NMC that the petitioner was not considered for grant of LoP on flimsy excuses either that the Essentiality Certificate was not in the revised format or otherwise rejecting the case of the petitioner on grounds that it lacked adequate infrastructure and manpower.

It was further urged that it was not open to the NMC to suggest that the substratum had been lost inasmuch as it was in the year 2023 when they conducted the inspection and found that not only the infrastructure was in place as required but the deficiency as regards the manpower is stated to be limited to only 1.85% in the report of the NMC. It was further urged that if it was a case for cancelling the Essentiality Certificate on the grant of loss of substratum then the State Government, in the normal circumstances, ought to

have issued a show-cause notice to the petitioner on that specific ground which would have been answered by the petitioner.

36. In other words, it was sought to be suggested by the learned Senior Counsel that in the absence there being any request by any other entity expressing its desire to setup a college in that area, it could not be said that the substratum was lost inasmuch as the need to have a hospital or a medical college still subsisted in the said area. It was, therefore, sought to be urged that in the absence of any such specific ground having been made by the Government, the Essentiality Certificate could not have been cancelled without giving an opportunity to the petitioner to submit its explanation to the same and since there was no such ground made out in the show-cause notice, any decision taken by the Government would be unsustainable in law.

Although no such specific case has been set up in that regard by the petitioner in the pleadings, however, learned Senior Counsel sought to setup a case of discrimination and unfair treatment violative of Article 14 of the Constitution of India, during the course of arguments on the ground that medical colleges with much poorer infrastructure had been permitted by the NMC to admit the students.

37. In our opinion, we cannot, at this stage, go into the issue of discrimination qua other medical colleges in other states in the absence of

specific pleadings in this regard in the petition and without inviting proper response in regard to such averments.

38. The next argument of learned Senior Counsel was that it was fallacious to say **Sukh Sagar Medical College** laid down any ratio which was contrary to the principles of law laid down in **Chintpurni Medical College**. It was sought to be emphasized with reference to the judgment of **Career Institute Educational Society v. Om Shree Thakurji Educational Society**³.

We are, however, not convinced with the argument of learned Senior Counsel for the simple reason that the ratio of the judgment in **Chintpurni Medical College** case clearly was that the State Government has the power to withdraw the Essentiality Certificate where it was obtained by playing fraud or where the very substratum on which the Essentiality Certificate was granted, disappeared.

39. We may not be required to delve much by applying tests laid down by the Apex Court in the judgments cited by the learned Senior Counsel to determine as to what is the ratio laid down by the Apex Court in **Chintpurni Medical College** case inasmuch as we have no doubt that the ratio of the judgment is that the State Government has the power to withdraw the Essentiality Certificate in view of what was stated by the Apex Court in the said judgment, in particular, para No.36, which has been already reproduced

³ (2023) 16 SCC 458

in the preceding paragraphs. In fact, the three Judge Bench of the Hon'ble Supreme Court had only expanded the concept of fraud on which the Essentiality Certificate could be withdrawn.

Moreover, the ratio of the judgment has subsequently been followed in **V N Public Health and Educational Trust v. State of Kerala**⁴ where a three Judge Bench of the Apex Court held thus:

“31. Let us make it clear that there can be no analogy drawn between the facts of Chintpurni case (Supra) and the present case. The Sukh Sagar Case (Supra) actually expanded the circumstances in which the State Government may withdraw the EC. The dictum of Sukh Sagar (Supra) actually supports the case of respondents.

32. The law thus stand settled that the State Government has power to withdraw the EC where it is obtained by playing fraud on it or where the very substratum on which the EC was granted vanishes or any other reason of like nature.”

40. We, therefore, have no doubt that the Essentiality Certificate could have been cancelled on the ground of either fraud or the substratum having been lost.

41. Another argument advanced by learned Senior Counsel was that the cancellation would be bad because the same was done by the State Government at the behest of NMC (at that time, the Board of Governors) and was not an independent initiative of the Government, who never intended to cancel the said certificate. Reference in this regard was also made yet again to **Chintpurni Medical College** case and in particular, para No.8 where the

⁴ (2021) 17 SCC 189

Apex Court had, in similar circumstances, held the certificate cancellation order could have been vitiated on the ground that it was done pursuant to the *diktat* of the MCI in that case. It was in the above context that, in para No.8, the Apex Court held that the Government appears to have withdrawn the Essentiality Certificate acting under the diktats of the MCI, which would vitiate the withdrawal of the Essentiality Certificate by the State. For facility of reference, para No.8 is reproduced as under:

“8. Before going into the merits of the submission, it is important to note that the State Government appears to have withdrawn the essentiality certificate acting under dictation of MCI. This is obvious from the letter dated 13-7-2017 referred to above. This by itself would vitiate the withdrawal of the essentiality certificate by the State, vide *Anirudhsinhji Karansinhji Jadeja v. State of Gujarat and Dipak Babaria v. State of Gujarat.*”

42. Reference in **Chintpurni Medical College** case was also made to the principle of administrative law by quoting a passage from **Wade and Forsyth in Administrative Law**⁵ as under:

“Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.”

43. In **Chintpurni Medical College** case, the MCI had addressed a letter, dated 13.07.2017, to the Government of Punjab that they would consider the

⁵ 10th Edition at p. 269

request for permission to facilitate shifting of the students to medical colleges in other states on account of the inspection conducted by the MCI, which found the college's deficiency and was banned for a period of two years, only on the condition that the Essentiality Certificate issued in favour of the said colleges be withdrawn.

Even in this case, it is stated that the Essentiality Certificate would not have been cancelled by the State Government but for the communication, by virtue of which the Board of Governors (MCI) have nudged the Government to withdraw the Essentiality Certificate. In this regard, it would be pertinent to refer to the said communication, dated 03.12.2018, in which the Assistant Secretary addressed a letter to the Special Chief Secretary in the following terms:

"In continuation to this office letter No.MCI-34(41)(R-53)/2018-Med./145912, dated 13.11.2018. the subject noted above. I am directed to inform you that in compliance of the Hon'ble High Court of AP, orders dt. 24.08.2018 in WP No. 27949, 27968 and 30074 of 2018, the matter with regard to reallocate the students of RVS Institute of Medical Sciences, RVS Nagar, Chittoor, A.P. to other Govt. Medical Colleges, Government of A.P. by increasing the seats was considered by the Board of Governors on 22.11.2018 and decided to approve the proposal of Govt. of Andhra Pradesh submitted vide letter dated 09.10.2018 and permit Govt. of Andhra Pradesh to accommodate 150 MBBS students admitted in academic year 2016-2017 under A, B & C category seats in RVS Institute of Medical Sciences in 11 Govt. Medical College of Andhra Pradesh by increasing the seats (one time) only for the purpose of adjustment of students, **subject to withdrawal of Essentiality Certificate by Govt. of Andhra Pradesh** in respect of RVS Institute of Medical Sciences, Chittoor, A.P."

44. It appears that acting on the *diktat* of the Assistant Secretary of the Board of Governors, a show-cause notice was issued by the Special Chief Secretary to the Government, dated 05.02.2019, to the petitioner to show-

cause as to why the Essentiality Certificate be not cancelled/withdrawn. The Assistant Secretary of the Board of Governors did not leave the matter at that and proceeded to follow up about the issue of cancellation of Essentiality Certificate by yet another communication, dated 08.02.2019, which reads as under:

“In this regard, I am directed to request you to intimate the present status with regard to reallocate the students of RVS Institute of Medical Sciences, RVS Nagar, Chittoor, A.P. to other Govt. Medical Colleges, Government of A.P. as well as decision of State Govt. with regard to withdrawal of Essentiality Certificate.”

Needless to say that finally the Essentiality Certificate came to be cancelled on 27.03.2019, which is the order impugned in writ petition W.P. No.4484 of 2019.

45. Learned counsel for the respondents did not controvert the aforesaid position of law as was stated by the Apex Court in **Chintpurni Medical College**. However, an effort was made to suggest that since the petitioner lacked the requisite manpower, infrastructure and the faculty, the cancellation of the Essentiality Certificate was justified in the facts and circumstances of the case.

46. In our opinion, even in the present case, just as in the case of **Chintpurni Medical College**, the cancellation of Essentiality Certificate was done only on account of the pressure exerted at the behest of the Board of Governors at the relevant time in 2019 when the adjustment of candidates in

other medical colleges was made subject to the condition of withdrawal of the Essentiality Certificate by the Government of Andhra Pradesh and the Government appears to have succumbed to that pressure and issued a show-cause notice following which the final orders came to be passed on 27.03.2019.

47. This principle of law was also dealt with by the Apex Court in **Anirudhsinhji Karansinhji Jadeja v. State of Gujarat**⁶ wherein it was held:

“11. ...This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20-A(1) was not exercised by the DSP at all.

12. Reference may be made in this connection to *Commr. of Police v. Gordhandas Bhanji*, in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the rules concerned had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

13. It has been stated by Wade and Forsyth in *Administrative Law*, 7th Edn. at pp. 358-59 under the heading “Surrender, Abdication, Dictation” and sub-heading “Power in the wrong hands” as below:

“Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them....

⁶ (1995) 5 SCC 302

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise....”

14. The present was thus a clear case of exercise of power on the basis of external dictation. ...”

48. Be that as it may, the cancellation of the Essentiality Certificate on this ground would stand vitiated.

49. While we have held that the order of cancellation is unsustainable on the ground that it had been issued primarily at the behest of the Board of Governors, yet we do not wish to lay down as a matter of proposition that the order of cancellation, having been set aside on that ground once, the Government is precluded from considering the issue yet again, independent of undue pressure as was exerted then by the Board of Governors, who had made the request for adjustment of students in the other medical colleges subject to the withdrawal of the Essentiality Certificate. Certainly, the Government can consider the issue yet again. However, we wish to state that for taking a call on whether the substratum has been lost or not, a few additional factors may be gone into by the Government.

a) Whether the Government has a policy which determines as to how many medical colleges are envisaged to be opened in the entire State, region, district or local area.

b) Whether the Government had received any other application for opening a medical college by an applicant, who has a

hospital, which otherwise satisfies the requirement of the NMC Act and fulfills the needs of the State qua that region, district or local area.

c) Whether during the interregnum between 2013 and 2025, any other medical college has been permitted to be set up according to the policy of the Government in that particular region, district or local area and whether according to the policy, there is no further need for another medical college.

d) If the policy envisages only one medical college in a district and if there is no hospital in that district, which satisfies the conditions of eligibility as per the NMC Act, then whether the Essentiality Certificate is at all to be cancelled and the applicant has to be given a chance to improve its infrastructure, faculty etc., to ensure that a full-fledged medical college becomes operational.

50. Notwithstanding the above, it can be seen that whereas the order of cancellation was passed by the Government in the year 2019, the same came to be stayed a month later on 17.04.2019 by a Division Bench of this Court, whereafter the petitioner had continuously been seeking the permission from the Central Government to run the college and make admissions. Inspections were also carried out from time to time, details whereof had already been given in the preceding paragraphs. It appears that in 2023, the Inspection

carried by the NMC, on which learned counsel for the petitioner placed heavy reliance, reflected the petitioner college to be mostly compliant with the minimum standard requirements as the deficiency in faculty was reported to be minimal at 1.85% and deficiency of resident doctors was stated to be NIL.

51. However, the Central Government did not grant permission for admission for the session 2023-24 on the ground that the Essentiality Certificate had not been furnished in the revised format. As was discussed earlier in the preceding paragraphs, the petitioner on the directions of the High Court was furnished the Essentiality Certificate on 10.08.2023, which was valid for a period of three years, according to the new norms prescribed under the NMC Regulations of 2023.

Insofar as the life of the Essentiality Certificate, which has been issued in favour of the petitioner is concerned, is to remain valid only till 2025-26, as it was issued for a period of three years in accordance with the revised 2023 regulations.

52. The petitioner has seriously contested the Inspection Report of MARB in connection with the admissions for the academic year 2024-25. The report *inter alia* suggested that there was a deficiency of 73.7% in faculty and 66% in regard to tutors/residents. Among others, some other deficiencies have also been pointed out in the report. At this stage, it would suffice to say that the contention of the learned counsel for the petitioner is that insofar as the

deficiency as regards the teaching faculty and tutor residents is concerned, the same was incorrectly recorded inasmuch as even when the faculty was in place and present at the time of headcount, as many as 54 faculty members and SRs, tutors were not considered on account of the failure on the part of the petitioner to provide form-16 of those faculty members.

It was urged that these Form-16s were made available before the appellate authority, which, however, did not consider nor make any reference to the same in the order passed either in the first appeal or in the second appeal. According to the petitioner, there is no significant deficiency insofar as the infrastructure is concerned and that it was fully compliant.

53. Learned Senior Counsel for the petitioner reiterated that approximately 200 crores had since been spent on creating the infrastructure and that too denying an opportunity to the petitioner to apply for consideration for admission for the session 2025-26 would be unfair and unreasonable on the part of the respondents based upon the order of cancellation of the Essentiality Certificate, which had since been stayed.

Learned counsel for the petitioner has also filed as many as 272 form-16 forms issued under the Income Tax Act, on record, to bring home the point that payments had been made to the staff and the faculty members, who were present at the time of inspection but were not taken into consideration because of the failure on the part of the petitioner to provide Form-16, which

even otherwise could not have been issued in favour of the petitioner at that relevant time. Be that as it may, we have seen from the record that the order passed by the appellate authorities does not at all deal with the Form-16s, which are stated to have been produced before them. In any case, we feel that this issue insofar as the process of admission for the academic session 2024-25 is concerned, is indeed rendered infructuous.

54. The entire effort of learned counsel for the petitioner to question the MARB inspection report is only with a view to somehow wriggle out of the accusation that there was loss of substratum with a view to save the Essentiality Certificate issued in its favour. In our opinion, this issue is rendered academic in view of the fact that we have already held the order of cancellation to be bad.

Moreover, the Essentiality Certificate issued in the revised format is only valid for a period of three academic years, with the academic year 2025–26 being the final year of its validity. In case the Essentiality Certificate issued in the revised form is not cancelled by the Government in the meantime, the NMC would test, by conducting an inspection, the adequacy of the medical college as regards the infrastructure, manpower, faculty etc. In case the petitioner satisfies the minimum standards required, certainly it would get the approval of the NMC and a permission from the Government would follow accordingly.

55. Before the NMC and the Government of India proceed to process the request of the petitioner for grant of permission for the academic session 2025-26 along with other colleges, who are similarly situated, we would like them to register some of our observations made in the light of the manner in which the inspections have been conducted till now.

56. It can be seen that in the inspection report prepared by the MARB for the academic year 2023-24, whereas the deficiency in faculty had been reflected as 1.85% and deficiency in resident doctors was reflected as NIL, the deficiency in teaching faculty for the academic session 2024-25 as 73.7% and that of residents/tutors deficiency is 66%. As to how this variation has crept in within one year needs to be analyzed. If the case of the petitioner is that it was fully compliant with the minimum standard requirement (MSR) for 2023-24, how did it drastically reduce in 2024-25.

57. Although learned counsel for the petitioner had suggested that it was fully compliant even for the academic session 2024-25, notwithstanding the fact that the faculty requirement had more than doubled as per the new regulations of 2023, yet when we look at the Form-16s produced by the petitioner placed on record by the petitioner, it can be seen that payments between Rs.45,000/-, Rs.70,000/-, Rs.1,10,000/- etc. have been made to various Associate Professors, Professors and other faculty members, which is strange, inasmuch as if there was regular faculty engaged by the petitioner,

the payments made would be much more than what was reflected in Form-16s.

58. Although the NMC has provided certain guidelines to its assessors giving instructions as to the scope of the assessment, one cannot disregard the ingenuity of those who are at the helm of affairs running the colleges, who find novel ways to defeat such processes. The instances are not uncommon where doctors are paid honorarium with instructions to them to be present only during the course of inspection by the team constituted by the NMC. This fact is generally known.

While Justice may be said to be blind, Judges are not, and they are certainly not oblivious to what goes on in the ecosystem in and around medical colleges, who seek affiliations with Universities or permissions from the Central Government for establishment and running of medical colleges.

59. Insofar as the in-patient occupancy of the hospital is concerned, it is generally known that sometimes patients are hired only for purposes of inspection, who are otherwise healthy and suffer no ailment and whose services are dispensed with immediately after the inspection.

60. The last report of Inspection Committee, dated 27.06.2024, in regard to academic session 2024-25 the Inspection team of the MARB had recorded that patients in the female wards were brought to the hospital on the same day for preventive health checks that they had no illness. Even in the pediatric

ward, the Committee had recorded that apart from the fact that no pediatrician was available to interact, the children and patients in the pediatric ward were mostly healthy and playful. The statement made by the concerned duty sister in the pediatric ward by the name Rimi Thomas had informed the team that the pediatric patients had arrived the same morning on the day of the assessment.

There was thus a deliberate attempt, indicated by the Inspection Team in its report, made by the college to trump up the bed occupancy in the hospital. Although the Government in the second appeal of the petitioner did not deal with the objections on merits raised by the petitioner to the observations made by the inspection team, we propose not to go into that question at this stage except that the observations made by the team of assessors during the inspection ordinarily cannot be brushed aside lightly in the absence of there being any mala fides alleged against any of the members.

61. Be that as it may, the inspections which are generally conducted by the MARB ought to go into minute details to verifying as to whether the faculty was hired on for purposes of inspection for that limited duration. In case it is found that any of the doctors had lent their names for extraneous consideration, were not part of the faculty of the college and were hired for the limited purposes of ensuring that the college cleared the minimum standard test prescribed under the regulations of NMC, then it is high time that those

doctors are identified and action taken or recommended be taken by an appropriate authority either by the Ethics and Medical Registration Board or like authorities under the NMC Act and regulations framed thereunder and other enabling statutory enactments.

62. Insofar as the applicants, who had applied for establishing or running a medical college if are found guilty of misrepresentation of facts, manipulation and fabrication of record and resort to inflating the number of patients who attend OPD, the number of patients admitted, number of faculty members actually on their rolls etc., then such a case would fall within the ambit of fraud on the part of such an applicant, who then ought to be permanently barred from future consideration for the grant of an Essentiality Certificate or the LoP.

63. A non-functional hospital with very low OPD attendance of patients as also an insignificant number of patients who are admitted in the hospital and deficiency of other clinical material would not only defeat the very purpose of establishing a medical college aimed at adding to the human resource of doctors to improve the doctor-patient ratio, but such doctors, if produced from such medical colleges by playing deceit or fraud, would produce only half baked and ill-trained doctors, who would not be of any use or service to the general population.

64. Be that as it may, W.P. No.4484 of 2019 is allowed. The order passed by the Government, dated 27.03.2019, cancelling the Essentiality Certificate,

is quashed. In view of the fact that W.P. No.4484 of 2019 stands allowed, writ petitions bearing Nos.2212, 5949, 6748, 7619 of 2019 are rendered academic. W.P. No. 22536 of 2024 is rendered infructuous inasmuch as the timelines for making admission for the academic session 2024-25 is since over. The writ petitions are, accordingly, disposed of. No costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

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**HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO**

W.P.No.4484 of 2019 & Batch

Dt:26.05.2025

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