

W.A. No. 460/2021

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF MARCH 2021 / 3RD CHAITHRA, 1943

WA.No.460 OF 2021

AGAINST THE JUDGMENT DATED 15.12.2020 IN WP(C) 27034/2020(D) OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MALABAR MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTRE,
ESTABLISHED BY SREE ANJANEYA MEDICAL TRUST, MODAKALLUR,
KOZHIKODE-673 323, REPRESENTED BY ITS AUTHORISED
SIGNATORY.
BY ADV. SRI.P.SANJAY

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH, N
EW DELHI-110 001.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH AND
FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 NATIONAL MEDICAL COMMISSION (NMC),
PRESENTLY MEDICAL COUNSEL OF INDIA), POCKET-14, SECTOR 8,
DWARKA, NEW DELHI-110 077.
- 4 KERALA UNIVERSITY OF HEALTH AND ALLIED SCIENCES,
THRISSUR, REPRESENTED BY ITS REGISTRAR, PIN-680 596.

R3 BY SHRI.TITUS MANI VETOM, SC, MEDICAL COUNCIL OF INDIA
R4 BY SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH
SCIENCES

R1 BY SRI. S.KRISHNA, CGC,

R2 BY SRI. M.A.ASIF SPL GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24-03-2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAJI P. CHALY, J.

The captioned writ appeal is preferred by the petitioner in W.P. (C) No. 27034 of 2020 challenging the judgment dated 15.12.2020, whereby the learned single Judge declined the following reliefs sought for by the appellant in the writ petition:

1. Call for the records relating to Ext.P8 and peruse the same.
2. Issue a writ of certiorari and quash Ext.P8.
3. 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.
4. Issue a writ of mandamus directing the 3rd respondent to grant such further time that this Hon'ble Court may deem fit for production of consent of affiliation in the facts and circumstances of the case.
5. Issue a writ of mandamus directing the 3rd respondent to consider the applications for enhancement/starting of PG courses for the year 2021-2022 now pending and listed in Ext.P10 representation without insisting on consent of affiliation.

2. Brief material facts for the disposal of the appeal are as follows:

The appellant is a registered Charitable Educational Trust established in Kozhikode in the year 2003 and has set up the Malabar Medical College Hospital and Research Centre, apart from other professional colleges administering dental, nursing and para medical

courses in the district. The appellant has been running a 150 seats Medical College since 2010 and it is submitted that a 720 bedded hospital having all speciality and super speciality departments are attached to the medical college. The appellant has filed the writ petition aggrieved by the decision of the National Medical Commission, which has replaced the Medical Council of India—third respondent, directing the appellant to submit the consent of affiliation (COA) from the Kerala University of Health and Allied Sciences, which is regulating and controlling the medical college and other allied institutions in the State of Kerala.

3. According to the appellant, the National Medical Commission has overlooked the fact that the University itself has written to it, its inability to carry out the inspections regarding the issuance of consent of affiliation for some of the post graduate courses applied for by the appellant due to the pandemic Covid-19. It is the case of the appellant that the applications were submitted by the appellant for starting of seats in various post graduate courses at Malabar Medical College under Section 10A of the Indian Medical Council Act, 1956 ('Act, 1956' for short) for the academic year 2021-2022 on the basis of the directions contained in Ext. P1 judgment in W.P.(C) No. 14835 of 2019 dated 04.03.2020, which was filed by the appellant when the Kerala

University of Health Sciences put a cap to the number of seats as two as against more number of seats applied by the appellant.

4. In the judgment, the learned single Judge directed the University to take a decision on the enhanced number of seats sought for and the National Medical Commission was directed to consider the application of the appellant as a continuing one, rather than a fresh application for enhancement. It is submitted by the appellant that the requisite fee of Rs.4.72 lakhs for each course was paid by the appellant and therefore, the stand adopted by the Medical Commission of India that the appellant has not produced the consent of affiliation from the University cannot be sustained under law.

5. Fact remains, the appellant has applied for 9 post graduate medical courses. However, the Kerala University of Health Sciences has only granted consent of affiliation for 5 courses and that too, limiting the seats to two; but as per the communications dated 17.08.2020, 17.08.2020, 27.08.2020, 27.08.2020 and 27.08.2020 as is evident from Ext. P4 series in regard to MS Orthopaedics, MD Paediatrics, MD Dermatology Venereology and Leprosy, MD General Medicine and MD Anesthesiology, the seats were enhanced. In fact, what is sought to be quashed is Ext. P8 communication issued by the National Medical Commission informing the appellant that the applications were

scrutinized in accordance with the provisions of the 'Opening of a New or Higher Course of Study or Training (including a postgraduate course of Study or Training) Regulations, 2000 and on scrutiny, it was found that the consent of affiliation for starting of seats in MD (Community Medicine), MS (General Surgery), MS (Otorhinolaryngology) and MD (Paediatrics) has not been submitted. It was also pointed out thereunder that the appellant has to remit the application fees of Rs.4.72 lakhs for each subject through RTGS/NEFT and also to forward the details in respect of the same. In fact, the writ petition was amended by the appellant as per order in I.A. No. 1 of 2020 dated 09.12.2020 and incorporated an additional prayer seeking a writ of mandamus directing the 4th respondent University to grant consent of affiliation with or without inspection so as to ensure that it reaches the National Medical Commission on or before 15.12.2020.

6. The 4th respondent University, in fact, had filed a statement in the writ petition opposing the reliefs sought for in the writ petition. It is clear from the pleadings put forth by the appellant that even though more number of seats were requested to be started, the University has confined the number to two for each course, for which consent of affiliation was granted. Anyhow, on the basis of the directions issued by this Court in Ext. P1 judgment specified above,

seats were enhanced, as is evident from Ext. P4 series for the academic year 2021-2022 as specified above. But, fact remains, the applications submitted by the appellant for the academic year 2021-2022 for MD Anaesthesiology, MD Pulmonology, MD Emergency Medicine, MS Obstetrics and Gynaecology, and MD Pathology were not supported by the consent of affiliation of the University. In fact, the University conducted inspection and granted consent of affiliation originally for two seats each and later for additional intake for 5 PG Medical Courses and for starting 1 new PG medical course, evident from Ext.P4 series.

7. Matters being so, the appellant again approached the writ court by filing W.P.(C) No.18931 of 2020 seeking a direction to the Board of Governors, in supersession of Medical Council of India, to proceed with the applications dated 29.07.2020 for increase in the admission capacity in 9 PG Medical Courses for the academic year 2021-2022 made pursuant to the directions contained in Ext. P1 judgment, without insisting for payment of fee. However, on 15.09.2020, a submission made by the learned Standing Counsel for the Medical Council of India, (as it then was) was recorded that the applications made by the appellant would be considered on payment of fee, subject to the result of the writ petition, which is also evident from

Ext. P3.

8. Anyhow, the National Medical Commission came into being on and with effect from 25.09.2020 as per the provisions of the National Medical Commission Act, 2019, by which the Board of Governors, in supersession of the Medical Council of India, constituted under Section 3A of the Act, 1956 was superseded. Thereupon, the appellant submitted Ext. P5 representation dated 05.10.2020 before the National Medical Commission, 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 the admission capacity in 9 PG medical courses. On 18.11.2020, the National Medical Commission, as per Ext. P7 reply, informed the appellant that the bank details are available in the website and which has already been sent through e-mail dated 23.10.2020. It was noted by the learned single Judge that the appellant had remitted the requisite fee with the Medical Commission by transferring an amount of Rs.42,48,000/-. It was thereafter that on 23.11.2020, the appellant was informed as per the Regulations that the appellant has not submitted the consent of affiliation in regard to the 4 postgraduate courses specified above.

9. Anyhow, series of communications were exchanged with

respect to the fees to be paid etc. as is specified above. It was taking into account the stand adopted by the University that after conducting inspection, it had granted consent of affiliation for additional seats for 5 courses and two seats in respect of the new postgraduate courses. Anyhow, after taking into account the provisions of the Act, 1956 in regard to the starting of new postgraduate courses and the time limit prescribed in regard to the consideration of the applications for starting of the course etc. the writ court ultimately found that the time period for receipt of application was finally extended upto 31.08.2020 and therefore, the Medical Council of India/Board of Governors/Medical Commission were not at liberty to receive any application after the cut off date. It was, accordingly, that the learned single Judge decided itself not to issue any directions to the third respondent as is sought for in the writ petition to accept and process the applications preferred without the supporting documents as envisaged in the guidelines issued for the purpose. It was also found that Ext. P2 public notice dated 13.03.2020 was issued inviting applications for the academic year 2021-2022 alone and therefore, further directions cannot be granted, since the cut off date fixed by the Medical Council of India was over by 31.08.2020.

10. In fact, in the judgment in W.A. No. 1346 of 2020 dated

15.10.2020, a Division Bench of this Court while dealing with an appeal preferred by the appellant in W.P.(C) No. 15607 of 2020, held that the applications submitted by the members of the association of the self financing colleges were not liable to be considered by the Medical Council of India after the extended cut off date of 31.08.2020. On the basis of the strenuous submissions made by the appellant, the learned single Judge had considered the points raised referring to the judgments of the Apex Court in **V.N. Public Health and Educational Trust etc. v. State of Kerala & ors.** (Civil Appeal Nos. 2920/2020 and 2921/2020), **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh** [(1977) 4 SCC 145], **Mridul Dhar (5) v. Union of India** [(2005) 2 SCC 65], **Priya Gupta v. State of Chattisgarh** [(2012) 7 SCC 433], **Royal Medical Trust v. Union of India** [(2015) 10 SCC 19], **D.Y. Pattil Medical College v. Medical Council of India** [(2015) 10 SCC 51], **S.R.M. Institute of Science and Technology** [(2004) 9 SCC 676], **Educare Charitable Trust v. Union of India and another** [(2013) 16 SCC 474], **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh** [(1977) 4 SCC 145], **Oriental Bank of Commerce v. Sunder Lal Jain** [(2008) 2 SCC 280], **State of U.P. v. Harish Chandra** [(1996) 9 SCC 309] and **Bhaskara Rao A.B v. CBI** [(2011) 10 SCC 259] and finally held that no writ of mandamus can be issued directing an

authority to act in contravention of the statutory provisions and declined the reliefs.

11. We have heard the learned counsel for the appellant Sri.P Sanjay, learned Standing Counsel for the National Medical Commission, Sri. Titus Mani Vettom, learned Senior Government Pleader Sri. M.A. Asif for the State and Sri. P. Sreekumar for the Kerala University of Health and Allied Sciences, and perused the pleadings and materials on record.

12. The sole question to be considered in the appeal is whether there is any legal infirmity or jurisdictional error in the judgment of the learned single Judge. As we have pointed out in the deliberations above, the last date for submission of the application before the National Medical Commission was on 13.08.2020. Admittedly, the appellant could not submit an application before the National Medical Commission before the cut off date as above along with the requisite documents ie., to say the consent of affiliation from the University. It is an admitted fact that even though the appellant has applied for 9 postgraduate courses during the academic year 2020-2021, the University could inspect the appellant institution only with respect to the 5 courses and it was accordingly that the consent of affiliation was issued by the University, and later seats were enhanced consequent to

the direction issued by this court in Ext P1 Judgment .

13. It is an undisputed fact that the appellant has not taken any steps within the cut off date fixed in regard to the alleged failure on the part of the University to conduct inspection with respect to the other courses so as to consider the request of the appellant for issuance of consent of affiliation. The writ petition was filed by the appellant only on 11-12-2020 and the contention advanced was that as per Ext. P11 communication issued by the National Medical Commission dated 07.12.2020, the time period was extended upto 15.12.2020. But, fact remains, the said communication is a personal communication issued by the National Medical Commission to the Dean/Principal of the appellant college for forwarding consent of affiliation etc. The said communication is extracted hereunder for convenience:

“The Dean/Principal,
Malabar Medical College,
Kozhikode,
Calicut, Kerala, Modakkaliur (PO),
Ulliyeri, Kozhikode, Kerala-673 323.
E-mail: mmccalicut@gmail.com; care@mmchospital.in

Subject: Applications for Starting_of seats in various Postgraduate courses at Malabar Medical College, Kozhikode, Calicut, Kerala u/s 10A of the IMC Act, 1956 for the academic year 2021-22.

Madam/ Sir,

Please refer to your letter dated 27/11/2020 forwarding therewith the applications for

starting of postgraduate courses at Malabar Medical College, Kozhikode, Calicut, Kerala u/s 10A of the IMC Act, 1956 for the academic year 2021-22.

1. Starting of seats MD (Respiratory Medicine)
2. Starting of seats in MD (Emergency Medicine)
3. Starting of seats in MD (Pathology)
4. Starting of seats in MS (Obstetrics & Gynecology))

I am directed to inform you that the Consent of Affiliations has not been submitted for the above mentioned courses. You are requested to submit the required documents within 15 days and not later than 15.12.2020 for enabling the Commission to process your applications.

It is further to inform you that the Consent of Affiliations for the courses mentioned by you vide letter dated: 29.08.2020 for starting of seats is not traceable. Kindly send scanned copies of the same to the below mentioned email address, as soon as possible, along with hard copies on or before 15.12.2020.

In the event the above documents are not received by the stipulated time, the applications, as above, would be considered as disapproved.

E-mail at pg@mciindia.org

Yours faithfully

CC:Guard File (10A)

(Prof.Dr. S.Ramji)

Sr. Advisor”

14. On a reading of the said communication, it is clear that in the first part of the communication, 4 postgraduate courses are mentioned and it is pointed out that consent of affiliation has not been submitted for the 4 specified courses and the appellant was requested to submit the required documents within 15 days and not later than

15.12.2020 for enabling the Commission to process the applications. It is also specified in the said letter that the consent of affiliation submitted by the appellant in regard to the 5 courses was not traceable in the office and thereupon the appellant was directed to forward scanned copies of the same to the National Medical Commission on or before 15.12.2020.

15. In our considered opinion, the date fixed in Ext. P11 communication can never be treated as an extension of time period by the National Medical Commission from 13.08.2020. But, on the other hand, it could only be treated as a communication issued basically thinking that the appellant has secured consent of affiliation from the University for the 4 post graduate courses mentioned thereunder also, apart from the consent of affiliations of the five courses forwarded. However, in fact, the University has not issued any consent of affiliation to the appellant before the cut off date and even now. It may be true that the University has addressed the Indian Medical Council/National Medical Commission seeking extension of time for conducting the inspection. But, that was never allowed by the Medical Council of India/National Medical Commission. Merely because a communication was addressed to forward the copies of the consent of affiliation and scanned copies of consent of affiliation already sent

cannot be treated as an extension of time for considering the applications of the appellant forwarded without the consent of affiliations.

16. According to us, the issues raised by the appellant in respect of the said aspects were considered by the learned single Judge taking into account the imperative requirements followed by the Apex Court in its various judgments especially in regard to the time period/schedule fixed by the Medical Council of India/National Medical Commission so as to process the applications under the provisions of the Act, 1956, later Act and the regulations.

17. It is also clear that a structured formula is adopted by the authorities under the Act, 1956, the later Act, 2019 and the Regulations thereto in respect of the receipt of applications, processing the same and the culmination of the proceedings. It would not be conducive and feasible to alter the said formula adopted in the matter of processing the applications by the statutory authorities, by the courts of law, so as to enable the appellant to secure any consent/permission after the cut off date, and if done, it would materially affect the student community, since it would prolong the course period and which in turn would be against the public policy and the public interest. Even though the learned counsel for the

appellant has invited our attention to the judgment of the Apex Court in ***Royal Medical Trust (Registered) v. Union of India and another*** [(2014) 14 SCC 675], in our considered opinion, that was a case where the application for consent of affiliation was not at all considered by the Kerala University of Health Sciences. But, this is a case where, out of the consent of affiliations sought for 9 postgraduate courses, 5 were granted and seats were enhanced within the time period consequent to a direction issued by a learned single Judge of this Court. But, the appellant never initiates any action within the time period prescribed under law in regard to the consent of affiliations not granted. There is also no force in the contention that the appellant would not be in a position to make out the said aspect, because the structured mechanism for processing the application and the cut off dates are well known, and a statutory requirement, against which no ignorance can be pleaded by the appellant. According to us, the appellant was well informed of the situation being a player already in the field of medical education, but his attempt was to make use of ExtP11 communication as one intended to extend the time period from 13-08-2020 to 15-12-2020, which is indicative from the date of filing the writ petition ie., 11-12-2020, the communication being one dated 07-12-2020. This would be further fortified by the fact that till such time, he has kept quiet though his applications seeking consent of

affiliation for four courses were not considered by the University within the time frame fixed under law. Moreover, the subsequent judgments of the Apex Court in ***Ponnaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India and another*** [(2015) 10 SCC 83] and ***V.N. Public Health and Educational Trust etc. v. State of Kerala and ors.*** [Civil. Appeal Nos. 703-704 of 2021)] dated 24-02-2021 show that the Apex Court had adopted a strict view in respect of the structured formula and cut off date fixed for entertaining the applications for new courses and enhancement of seats etc., which is very well reflected in the judgment in ***V.N Public Health*** (supra).

19. But, we place on record the submission made by the learned Standing Counsel for the National Medical Commission as well as the Kerala University of Health Sciences that the last date for submitting the application for the academic year 2022-2023 is 07.04.2021, and if the appellant makes any application in accordance with law in regard to the year 2022-2023, we have no reason to think that the University as well as the National Medical Commission would not consider the said application.

20. Having gone through the judgment of the learned single Judge, we are of the considered opinion that the learned single Judge

has taken into account each and every vital aspect so as to arrive at the conclusions in regard to the points raised by the appellant. It is well settled in law that any jurisdictional error in exercising the discretion or any other patent illegality in the judgment of the learned single Judge need alone be the consideration in an intra court appeal filed under Section 5 of the Kerala High Court Act. To put it otherwise, we could not locate any such aspects in the judgment of the learned single Judge and therefore, we do not find any reason to interfere with the judgment.

Needless to say, the writ appeal fails and accordingly, it is dismissed.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv