REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2843/2020
(arising out of SLP(C) No. 3820/2020)

Sukh Sagar Medical College & Hospital ...Appellant(s)

Versus

State of Madhya Pradesh & Ors.....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.

2. The seminal question in this appeal is: whether the State Government had unjustly revoked the Essentiality Certificate granted to Gyanjeet Sewa Mission Trust[1] for establishing a medical college at Jabalpur in the State of Madhya Pradesh, being contrary to the decision of a two-Judge Bench of this Court

1 For short, "the appellant-Trust" or "the appellant-College"

in ***Chintpurni Medical College And Hospital & Anr. Vs. State of Punjab & Ors.***[2]?

3. Shorn of unnecessary details, the Government of Madhya Pradesh, on an application made by the appellant-Trust, issued the stated Essentiality Certificate as prescribed in Form-2 appended to the Medical Council of India Establishment of Medical College Regulations, 1999[3]. The same reads thus: -

"Government of Madhya Pradesh
Medical Education Department, Bhopal

F.No. F-5-56/2014/1/55 Date: 27.08.2014

To,
The Chairman,
GhyanjeetSewa Mission Trust,
SukhSagar Medical College & Hospital Jabalpur
Jabalpur

Sir,

The desired certificate is as follows: -

1.	No. of institutions already existing in the State.	6 Autonomous Medical Colleges 7 Private Medical Colleges
2.	No. of seats available or No. of doctors being produced annually.	1770 MBBS Seats
3.	No. of doctors registered with the State Medical Council.	Not Updated
4.	No. of doctors in Government service.	Not Updated

2 (2018) 15 SCC 1
3 For short, "the 1999 Regulations"

5.	No. of Government posts vacant and those in rural/difficult areas.	Not Updated
6.	No. of doctors registered with Employment Exchange.	Not Updated
7.	Doctor population ratio in the State.	The population of State is 7,26,27000 as per 2011 census. The population of Jabalpur Division, where the Medical College is proposed is 24,63,289
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.	By increasing qualified Medical Doctors in the state of Madhya Pradesh.
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.	No restrictions. The admission will be made through M.P. Professional Examinations Board.
10.	Full justification for opening of the proposed college.	For opening of the proposed Medical College, the applicant is a Registered Trust, possessing 27.27 acres of land with 300 bedded **running hospital and adequate planning & time bound programme.** The Applicant is developing Staff Quarters, Nurses Quarters, Boys & Girls Hostel along with ample Administrative Block, Parking Space, Sports Ground and **having well managed funds to run the Medical**

		College & Hospital. The Hospital would serve the growing population of Jabalpur. People will get modern health treatment under one roof. **The opening of medical college will give 150 trained & educated Medical Professionals to the society every year, who will contribute in serving the public at large. Thus, opening up of a Medical College and Hospital in Jabalpur would not only bridge the huge gap but will definitely contribute on its part for the service of needy patients of Jabalpur, in particular and the state at large**.
11.	Doctor-patient ratio proposed to be achieved	Marginally increased

The Ghyanjeet Sewa Mission Trust, has applied for establishment of a new Medical College at Jabalpur. On careful consideration of the proposal, the Government of Madhya Pradesh has decided to issue an essentiality certificate to the [*sic*] applicant for the establishment of a Sukh Sagar Medical College & Hospital Jabalpur with 150 seats in MBBS Programme under **following conditions**: -

1. **Institute will fulfil the norms of MCI before inspection of Medical Council of India**.

2. **Institute will appoint the staff as per norms of MCI**.

3. Government will neither bear any financial burden nor provide grant to the institute.

4. **Institute will follow all the rules/conditions of MCI and State/Central Government**.

5. Institute will admit the student only after written permission from Central Government, MCI and State Government.

6. Institute will admit the students by adopting transparent procedure as decided by admission and fee regulatory committee appointed by the State Government.

7. Institute will charge the fee as decided by the State Government (admission and fee regulatory committee). No other fee will be admissible.

It is certified that: -

i. The applicant owns and manages a 300 bedded hospital.

j. It is desirable to establish a Medical College in the public interest.

k. 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 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.

By order in the name of Governor of Madhya Pradesh.

Sd/-
27.08.2014
(Sanjeev Shrivastava)
Deputy Secretary
Govt. of Madhya Pradesh
Medical Education Deptt.
Dated /08/2014"

(emphasis supplied)

4. After issuance of the aforementioned Essentiality Certificate, the appellant-Trust submitted a scheme to the Medical Council of India[4], for establishment of a new medical college at Jabalpur in

4 For short, "the MCI"

the name and style of Sukh Sagar Medical College & Hospital with annual intake of 150 students in MBBS course for the academic year 2016-17. The MCI after due inspection had submitted a negative report to the Central Government due to gross deficiencies, including fake records regarding the patients and resident staff, as a result of which the Ministry of Health and Family Welfare, Government of India vide letter dated 10.6.2016, rejected the proposed scheme. However, in light of the directions dated 13.6.2016 issued by the Supreme Court Mandated Oversight Committee (OC)[5], the Ministry of Health and Family Welfare issued a letter on 20.8.2016 in supersession of its earlier letter, according permission to the appellant-Trust for establishing a medical college on certain conditions mentioned therein. This permission was valid for a period of one year, to be renewed on yearly basis subject to the verification of the achievement of annual targets as indicated in the scheme submitted by the Trust and revalidation of performance Bank Guarantee. It was made clear that the process of renewal of permission will continue till such time the establishment of medical college and expansion of hospital facilities were to be

5 For short, "the SCMOC"

completed and a formal recognition of the medical college is granted in furtherance thereof. It was also made clear to the Trust that the next batch of students in MBBS course for the academic year 2017-18 be admitted in the college only after obtaining prior permission of Central Government and fulfilling conditions stipulated by the SCMOC referred to in paragraph 2 of the Letter of Permission (LoP). The MCI inspected the college and found that the undertaking given by the management was breached and violated, as a result of which the Central Government debarred the college for academic years 2017-18 and 2018-19.

5. It is an admitted position that for the subsequent academic years i.e. 2017-18, 2018-19 and 2019-20, no renewal of permission was accorded to the appellant-College. The latest assessment report of the MCI dated 3rd and 4th January, 2019, would indicate that the appellant-College was unable to rectify the deficiencies pointed out by the Inspecting Committee of the MCI. The deficiencies noted in the assessment report read thus:

-

"…

1. No orientation & basic course undergone by MEU.

2. One Lecture theatre for college lacking, hospital Lecture Theatre not gallery type.
3. In Central Library:
   - Number of books less by 798
   - Indian Journals less by 14
   - Foreign Journals less by 06
4. **Hostel accommodation less by 176 (Required 360 – available 224**).
5. Biometric device not yet installed.
6. **Bed Occupancy 3.65% (15 patients on 410 beds)**.
7. **Minor surgeries, normal deliveries, caesarean section – Nil**
8. Ba, IVP – Nil, CT Scan not installed.
9. Number of admissions only 2, casualty attendance one (01).
10. Cytopathology Nil, Static X-ray in casualty – Nil
11. Separate casualty for OBGY not available.
12. Defibrillators total 04 in OT block and are being shared between various theatres.
13. **No patients in ICCU, ICU, SICU, NICU and PICU**.
14. 01 mobile 60 mA, 01 Static 800 mA, CT not available in Radiology department.
15. No mannequins available in Pharma department.
16. **No accommodation available for students in RHTC, Students go to RHTC but not in UHTC**.
17. **Deficiency of Faculty 88.03% (103/117)**
18. **Deficiency of Residents 90.9% (60-66)**

…"

(emphasis supplied)

Resultantly, the Board of Governors in Supersession of MCI, vide letter dated 30.5.2019, declined to accept the request for renewal of permission for admission to 150 students in MBBS course for the academic year 2019-20.

6. In this backdrop, the Additional Secretary, Medical Education Department of Government of Madhya Pradesh, issued a show-cause notice dated 7.8.2019, calling upon the appellant to show cause as to why the Essentiality Certificate issued in favour of the appellant-Trust should not be cancelled.

7. The appellant assailed the said show-cause notice by filing a writ petition before the High Court of Madhya Pradesh, Principal Seat at Jabalpur[6], being Writ Petition No. 17946/2019. During the pendency of the said writ petition, the appellant submitted response to the show-cause notice and questioned the authority of the State Government to revoke the Essentiality Certificate, mainly relying on the decision of this Court in ***Chintpurni Medical College*** (supra).

8. Additional Secretary, Medical Education Department, Government of Madhya Pradesh, after giving due opportunity to the appellant and considering its response to the show-cause notice, eventually proceeded to pass an order directing cancellation/revocation/withdrawal of the Essentiality Certificate

6 For short, "the High Court"

dated 27.8.2014. It is apposite to advert to the reasons that weighed with the authority in cancelling the Essentiality Certificate. The authority has taken into account that the appellant had failed to remove the deficiencies pointed out by the MCI from time to time and no renewal of permission was granted for academic years 2017-18, 2018-19 and 2019-20 on that count. Thus, the appellant had failed to provide even the minimum clinical material for running of a medical college, contrary to the conditions specified in clause numbers 1, 2 and 4 of the Essentiality Certificate. In substance, the college had failed and neglected to provide for the minimum standards specified by the MCI for running of a medical college, despite several opportunities given in that regard since academic year 2016-17. The deficiencies (as noted in the assessment report of the MCI), were gross and had even jeopardised the academic career of the first batch of 150 students admitted in the college during academic year 2016-17. It had also come to the notice of the State authorities that the College had declined to impart education to those students who had not deposited fees, which was again in violation of the conditions specified in the Essentiality Certificate. During a joint meeting between the

Collector, Jabalpur, management of the College and students, convened on 19.7.2019, the grievances of the students were considered and direction was issued to the management to take corrective measures within ten days and provide the basic minimum facilities to the students and resume the classes. However, that did not happen. In the concluding part of the order dated 5.9.2019, therefore, it is noted as follows:-

> "…..
>
> (xvii) Also regarding the Sukh Sagar Medical College & Hospital, the acts of not providing proper infrastructure facilities for the study of medical students, lack of necessary academic staff for teaching the course, non-availability of clinical material due to the very less numbers of patients to be admitted in the hospital, and the fact of not granting recognition by the MCI for the Sessions 2017-18, 2018-19 and 2019-20 due to the different deficiencies, misbehaving with the students, are the **gross violation of the conditions and basis conditions of grant of Essentiality Certificate** issued by the State Government. **In this regard, due to the failure of College Management in taking necessary action continuously for a period of 3 years, it is itself clear that they have been completely failed in serving the main objective of issuance of Essentiality Certificate i.e. providing better medical facility to the patients and increasing the numbers of medical professionals. On the other hand, in the lack of necessary facilities required for the medical training of the students admitted in the session 2016-17, their future has gone in dark**. Therefore, Show Cause Notice (SCN) issued by the State Government to the Sukh Sagar College, is in accordance with law.
>
> (xviii) In W.P. No. 17946/2019, Sukhsagar Medical College & Hospital vs. State of M.P. & Ors., the Hon'ble High Court has directed the Competent Authority to decide the present case after taking into cognizance all the aspects related to the present case. In this continuation, the Report of Collector, Jabalpur and the different objections submitted by

> the Sukh Sagar Medical College Management, were examined in detail and pointwise examination was made in compliance of the directions issued by the Hon'ble Supreme Court in the matter of Chintpurni Medical College & Hospital (supra). On the basis of detailed examination of all the points, the decision to be taken by the Government is in accordance with the interim order passed by the Hon'ble High Court in W.P. No. 17946/2019.
>
> **Therefore, after due consideration, the State Government has decided that the Essentiality Certificate (Desirability & Feasibility Certificate) issued to the Sukh Sagar Medical College & Hospital, Jabalpur vide Letter No. F 5-56/2014/1/55 dated 27th August, 2014 of the Department, is hereby cancelled with immediate effect**.
>
> This order, shall subject to the final order passed by the Hon'ble High Court, Jabalpur, in W.P. No. 17946/2019 titled as Sukhsagar Medical College & Hospital vs. State of M.P. & Ors.
>
> …"
>
> (emphasis supplied)

9. The appellant, therefore, amended the pending writ petition and challenged the order dated 5.9.2019 passed by the Additional Secretary, cancelling the Essentiality Certificate (dated 27.8.2014). Before we advert to the impugned decision of the High Court, in passing, it is relevant to note that the students who were admitted in the first batch for academic year 2016-17, had filed a writ petition before the High Court being Writ Petition No. 12682/2019 for issuing direction to the State Government to accommodate the students of appellant-College in some other recognised Government/private colleges in the State, in light of

the conditions specified in the Essentiality Certificate, which was still in vogue. The High Court had disposed of the said writ petition on 9.7.2019 with direction to the State authorities to consider the representation of the concerned students and take necessary measures as per law. Eventually, after the Essentiality Certificate was cancelled by the State Government vide order dated 5.9.2019, the concerned students belonging to the first batch of 2016-17 came to be adjusted/reallocated in six recognised private colleges within the State of Madhya Pradesh as per the permission granted by the Ministry of Health and Family Welfare, Government of India vide letter dated 25.11.2019.

10. Reverting to the impugned judgment, summarily rejecting the subject writ petition filed by the appellant, by a speaking order, the High Court proceeded to hold that the decision in ***Chintpurni Medical College*** (supra) does not completely forbid the State Government from exercising power to revoke the Essentiality Certificate. The High Court also held that the State Government acted within the excepted categories referred to in the reported decision of this Court. Inasmuch as, the State Government has taken into account the fraud played by the

college in securing the Essentiality Certificate, the inability of the college to provide for the minimum standards of infrastructure and other facilities specified by the MCI for running of a medical college and also complete loss of substratum and larger public interest, as reasons for revocation of Essentiality Certificate by the State. While rejecting the writ petition, however, the High Court gave liberty to the appellant to remove the deficiencies pointed out by the MCI in its order dated 30.5.2019 and apply afresh for the Essentiality Certificate to the State Government and if the same is refused thereafter, the appellant was free to question such decision being a fresh cause of action. The writ petition has been disposed of by the High Court with these observations.

11. We have heard Mr. Dushyant Dave, learned senior counsel for the appellant, Mr. Vikas Singh, learned senior counsel for the Medical Council of India and Mr. Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh.

12. At the outset, we deem it apposite to closely analyse the two-Judge Bench decision of this Court in ***Chintpurni Medical College*** (supra). For, much emphasis has been placed on the

said decision as involving similar fact situation. Even in that case, the medical college had started in the year 2011 in the State of Punjab. The permission for the first batch was granted in the year 2011-12. For subsequent academic years i.e. 2012-13 and 2013-14, no renewal of permission was granted to the college, as it was found to be deficient during the inspection carried out by the MCI. For the academic year 2014-15, however, a Letter of Permission (LoP) was granted in terms of order of this Court in ***Hind Charitable Trust Shekhar Hospital Private Limited vs. Union of India & Ors.***[7]. Thereafter, no renewal of permission was granted to the petitioner for the academic year 2015-16. The college had applied for grant of recognition under Section 11 of the Indian Medical Council Act, 1956[8] in the year 2015. During the inspection carried out by the MCI, deficiencies to the extent of 100% came to be noted. Despite that, in terms of the decision of this Court in ***Modern Dental College & Research Centre vs. State of Madhya Pradesh***[9], the scheme submitted by the college was processed further. The SCMOC directed the MCI to conduct inspection and in case the college

7 (2015) 2 SCC 336
8 For short, "the IMC Act"
9 (2016) 7 SCC 353

was found deficient, it was to be banned for a period of two years. The MCI conducted inspection of the concerned college on 7.3.2017 and found it deficient, thus recommended to the Central Government to debar the college from admitting students against the allowed intake for two academic years i.e. 2017-18 and 2018-19. The above decision was unsuccessfully challenged by the concerned college by way of a writ petition. In the meantime, the State Government decided to withdraw the Essentiality Certificate issued to the concerned college. That decision was challenged by way of a separate writ petition before this Court. While considering that challenge, the Court examined the scheme of the provisions of the IMC Act and the purpose for which Essentiality Certificate was required to be issued by the State Government. It noted that the same has been made condition precedent at the time of submitting the scheme for grant of Letter of Intent (LoI)/Letter of Permission (LoP) to start a new medical college. It noted that the State Government is required to certify by way of Essentiality Certificate, its approval for establishment of a medical college with a specified number of seats in public interest, and further that such establishment is feasible. Thus, an Essentiality Certificate from the State

Government mentioning therein that it is essential to have a medical college, as proposed by the applicant, is to prevent the establishment of a college where none is required or to prevent unhealthy competition between too many medical colleges. Further, the only purpose of the Essentiality Certificate is to enable the Central Government acting under Section 10-A of the IMC Act to facilitate the competent authority to take an informed decision for permitting the opening or establishment of a new medical college and once the college is established, its functioning and performance and even the derecognition of its courses is governed by the provisions of the IMC Act and not any other law. Having said that, in paragraph 17, the Court observed as follows: -

> "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."
>
> (emphasis supplied)

The Court then went on to hold that the State Government is designated by the 1999 Regulations only for the purpose of Essentiality Certificate to justify the establishment of a medical college within its territories and that too when approached by a person seeking to establish a medical college. There is no direct conferral of any power of general inspection on the State and neither can such a power be read into the Regulations nor be implied as necessary to carry out an expressly conferred power which does not exist. While rejecting the argument of the State about the inherent right of the State to withdraw the Essentiality Certificate, in paragraph 24, the Court observed thus: -

> "24. The learned counsel for the State of Punjab submitted that since the essentiality certificate certifies the availability of adequate clinical material for the proposed medical college, as per the Regulations, the State has the necessary power of inspection of the college even after its establishment to ensure that there is adequate clinical material. **This submission must also be rejected since the State is enjoined to certify adequate clinical material only at the time of proposal of the medical college and not after it is established**. But we find from the submissions that the State has misinterpreted the term "adequate clinical material" completely. According to the State, "adequate clinical material" means "people" i.e. doctors, patients, staff, etc.

> Whereas, the term is understood in the field of medical education to mean data about number of admissions, number of discharges, number of deaths, number of surgeries, number of procedures, X-rays and laboratories investigations. Thus, what the State is required to certify is the data available in the region to justify the establishment of the proposed medical college. Obviously, for the purpose of justifying the existence of a medical college, the State's claim that it must have the right to inspect a college after it is established to see whether there are adequate numbers of doctors, patients, etc. to justify its continued existence is completely hollow and unfounded."
>
> (emphasis supplied)

The Court then noted the argument of the State about the existence of its power ascribable to Section 21 of the General Clauses Act, 1897[10]. In that regard, the Court noted that the certificate is neither a notification nor an order or rule or bye-law as contemplated by Section 21 of the 1897 Act. Further, the act of issuance of Essentiality Certificate by the State is a *quasi-judicial* function. It is neither a legislative nor an executive function as such, so as to attract Section 21 of the 1897 Act. Further, advisedly, there is no provision in the IMC Act or the 1999 Regulations empowering the State to revoke or cancel the Essentiality Certificate once granted by it in respect of an established medical college. In absence of an express provision in that regard and issuance of an Essentiality Certificate being a *quasi-judicial* function, Section 21 of the 1897 Act will be of no

10 For short, "the 1897 Act"

avail. In other words, the State had no power to withdraw the Essentiality Certificate once granted in respect of an established college. At the same time, the Court following earlier decisions of this Court observed that even in such a situation, the State would be competent to withdraw the certificate, where it is obtained by fraud or in circumstances where the very substratum on which the Essentiality Certificate was granted disappears or any other reason of the like nature. For that, the Court has referred to the decisions of this Court in ***Indian National Congress (I) vs. Institute of Social Welfare & Ors.***[11], ***Industrial Infrastructure Development Corporation (Gwalior) Madhya Pradesh Limited vs. Commissioner of Income Tax, Gwalior, Madhya Pradesh***[12], ***Ghaurul Hasan & Ors. vs. State of Rajasthan & Anr.***[13] and ***Hari Shankar Jain vs. Sonia Gandhi***[14] and of the High Court of Andhra Pradesh in ***Government of Andhra Pradesh & Anr. vs. Y.S. Vivekananda Reddy & Ors.***[15].

11 (2002) 5 SCC 685
12 (2018) 4 SCC 494
13 AIR 1967 SC 107
14 (2001) 8 SCC 233
15 AIR 1995 AP 1

13. At the outset, we may straightaway agree with the dictum in ***Chintpurni Medical College*** (supra) that the act of the State in issuing Essentiality Certificate is a *quasi-judicial* function, which view is supported by the analogy deduced from the reported decisions referred to above. Having said that, it must follow that Section 21 of the 1897 Act cannot be invoked and in absence of an express provision in the IMC Act or the 1999 Regulations empowering the State Government to revoke or cancel the Essentiality Certificate, such a power cannot be arrogated by the State relying on Section 21. That, however, does not deprive the State Government to revoke or withdraw the Essentiality Certificate in case where (a) it is secured by playing fraud on the State Government, (b) the substratum for issuing the certificate has been lost or disappears and (c) such like ground, where no enquiry is called for on the part of the State Government. In ***Indian National Congress (I)*** (supra), the Court while dealing with similar argument to assail the decision of the Election Commission to review its order registering the political party, observed as follows: -

> "33. However, **there are three exceptions** where the Commission can review its order registering a political party.

One is where a political party obtained its registration by playing fraud on the Commission, secondly, it arises out of sub-section (9) of Section 29-A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law."

(emphasis supplied)

And again, in paragraphs 41(3) and 41(4), while summing up the judgment, the Court held as follows: -

"41. To sum up, what we have held in the foregoing paragraph is as under:

1. xxx xxx xxx

2. xxx xxx xxx

3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:

(a) where a political party has obtained registration by practising fraud or forgery;

(b) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and

(c) any like ground where no enquiry is called for on the part of the Commission.

4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under

> Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act have no application."
>
> (emphasis supplied)

As noted earlier, even in ***Chintpurni Medical College*** (supra), the Court has clarified that the State Government can cancel/revoke/withdraw Essentiality Certificate in exceptional cases, by observing 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**."
>
> (emphasis supplied)

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.

14. The core issue in the present appeal, therefore, is whether the decision of the State Government, dated 5.9.2019, falls within one of the excepted categories. The first excepted category is

where the appellant had obtained the Essentiality Certificate by playing fraud on the State Government. It is well-settled that fraud vitiates any act or order passed by any *quasi-judicial* authority, even if no power of review is conferred upon it, as held in paragraph 34 of the decision in ***Indian National Congress (I)*** (supra) in the following words: -

> "34. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In *Smith* v. *East Elloe Rural Distt. Council* [(1956) 1 All ER 855], it was stated that the effect of fraud would normally be to vitiate all acts and orders. In *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.* [(1996) 5 SCC 550] it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also to statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to deregister such a political party."

As to when it would be a case of fraud played on the State Government, would depend on whether it was an attempt by the appellant to present facts, so as to misrepresent the State. The fraud can either be actual or constructive fraud. The actual fraud is a concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting, whereas the constructive fraud is

unintentional deception or misrepresentation that causes injury to another. The actual or constructive fraud as predicated in Black's Law Dictionary[16] is as follows: -

> "**actual fraud**. A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting. – Also termed *fraud in fact*; *positive fraud*; *moral fraud*."

> "**constructive fraud**. **1.** Unintentional deception or misrepresentation that causes injury to another. **2.** *Fraud in law*. Fraud that is presumed under the circumstances, without regard to intent, usu. through statutorily created inference. ▯ Fraud may be presumed, for example, when a debtor transfers assets and thereby impairs creditors' efforts to collect sums due. This type of fraud arises by operation of law, from conduct that, if sanctioned, would (either in the particular circumstance or in common experience) secure an unconscionable advantage, irrespective of evidence of an actual intent to defraud. – Also termed *legal fraud*; *fraud in contemplation of law*; *equitable fraud*; *fraud in equity*."

It may be also useful to advert to the meaning of "actionable fraud" in the Sixth Edition of the same Law dictionary, as follows: -

> "**Actionable fraud**. Deception practiced in order to induce another to part with property or surrender some legal right. A false representation made with an intention to deceive; such may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false; that when he made it he knew it was false, or made it recklessly without any knowledge of its truth and as a positive assertion; that he made it with intention that it should be acted on by plaintiff; that plaintiff acted in reliance on it; and that plaintiff thereby

16 Black's Law Dictionary 11th Edition

> suffered injury.... Essential elements are representation, falsity, scienter, deception, reliance and injury."

15. Indeed, in the present case, the State Government in its order dated 5.9.2019, has adverted to several aspects including the assessment report of the MCI and inspection report of the Committee. The substance of the reason weighed with the State Government, as can be culled out from the stated order, is that the appellant had failed to fulfil the commitment given to the State at the relevant time - of providing minimum infrastructure and fulfilment of the norms of MCI and appointing the staff as per norms of MCI - for all this period and was incapable in doing so despite repeated opportunities given since 2016 by the MCI. Further, even though the appellant was granted conditional Letter of Permission (LoP) for academic year 2016-17, it had failed to remove the deficiencies, as a result of which not even the first batch could pursue or complete the medical course in the appellant-College. The concerned students kept on making earnest representation to the State authorities to rescue them from the hiatus situation in which they were trapped. Indisputably, the concerned students (admitted in the first batch of 2016-17) were eventually reallocated to another recognised

college after November, 2019, as no renewal of permission to the appellant-College was forthcoming for three successive academic sessions i.e. 2017-18, 2018-19 and 2019-20.

16. Such circumstances reckoned by the State, by no stretch of imagination, can be disregarded as irrelevant, intangible or imaginary. Rather, the totality of the situation reinforces the fact that the appellant-College had failed and neglected to discharge its commitment given to the State at the relevant time; and is incapable of fulfilling the minimum norms specified by the MCI for starting and running a medical college. It had thus misrepresented the State Government at the relevant time by giving a sanguine hope of ensuring installation of minimum infrastructure and setting up of a robust organisational structure for running of a medical college “in a time bound programme”. Therefore, it can be safely deduced that it is a case of constructive fraud played upon the State Government. For, even after lapse of over five years from the date of issuance of Essentiality Certificate (27.8.2014), the appellant-College is not in a position to secure the requisite permission(s) from the MCI and the Central Government to run a medical college as per the scheme.

17. The State Government whilst discharging its role of *parens patriae* of the student community cannot remain a mute spectator and expose them to a college, which is deficient in many respects. The fact that no renewal permission has been granted by the MCI for three successive academic sessions due to gross deficiencies in the appellant-College, is itself indicative of the state of affairs in the appellant-College, warranting a legal inference that the substratum on the basis of which Essentiality Certificate was issued to the appellant-College had completely disappeared. For, even the first batch of students admitted in the appellant-College could not pursue their medical course and were eventually reallocated by the State Government to other recognised private medical colleges within the State as per the obligation specified in the Essentiality Certificate, after obtaining permission of the Central Government in that behalf in November, 2019.

18. The Essentiality Certificate was issued on the representation of the appellant-College that it would give 150 fully trained and qualified doctors each year to the State, thereby improving the doctor-patient ratio and provide healthcare to the

nearby population in the attached hospital. All this has become a mirage due to the failure of the appellant-College to get permission of Central Government for four successive academic sessions starting from 2016-17 till 2019-20. Not even one doctor has been produced by the appellant-College after issuance of the Essentiality Certificate nor the hospital attached to the college is provided with minimum standards specified by the MCI and is found to be grossly deficient. On a comprehensive view of the state of affairs, the fulfilment 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 non-functioning 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*.

19. The term "established" is not defined in the IMC Act or the 1999 Regulations. The common parlance meaning of this expression, as predicated in the Black's Law Dictionary 11th Edition, reads thus: -

> "**established**, **1**. Having been brought about or into existence. **2.** Having existed for a long period; already in long-term use. **3.** Proven; demonstrated beyond doubt. **4.** Known to do a particular job well because of long experience with good results. **5.** (Of a church or religion) officially recognised and sponsored by the government."

In the present case, however, the appellant-College was at the threshold stage of only opening and starting first year course for academic year 2016-17. It failed and neglected to fulfil even the minimum benchmark of standards specified by the MCI allowing it to run the medical college. Admittedly, no renewal permissions from the Central Government were issued for the successive academic years. In that sense, it is not a case of withdrawal of the Essentiality Certificate of an "established" medical college as such. Had it been a case of well-established and a running medical college having basic minimum infrastructure as per the specifications of the MCI and State Government was to withdraw its Essentiality Certificate, that matter would stand on a different

footing than the case at hand, where the college has miserably failed to ensure completion of medical course even of the first batch for three successive academic sessions from 2016-17 due to non-renewal of permission by the MCI.

20. Be that as it may, there would be legitimate expectation amongst the stakeholders, after issuance of Essentiality Certificate by the State Government, that the applicant-college shall fulfil the basic norms specified by the MCI in a time bound manner, so as to open the medical college and operate it as per the norms. That, however, has not happened in the present case since August, 2014 until the issuance of subject show-cause notice in August, 2019 and passing of the impugned order of withdrawal of Essentiality Certificate. The fact that the applicant has made certain investments for starting the medical college, by itself, cannot be the basis to undermine power of the State Government coupled with duty to ensure that the medical college is established in terms of the Essentiality Certificate within a reasonable time.

21. While dealing with the case of maintaining standards in a professional college, a strict approach must be adopted because

these colleges engage in imparting training and education to prospective medical professionals and impact their academic prospects. Thus, the future of the student community pursuing medical course in such deficient colleges would get compromised besides producing inefficient and incompetent doctors from such colleges. That would be posing a bigger risk to the society at large and defeat the sanguine hope entrenched in the Essentiality Certificate issued by the State.

22. Indeed, the fact that the Essentiality Certificate given to the appellant-College stands withdrawn, it does not follow that the need to have a new medical college in the concerned locality or the State ceases to exist. For, the *raison d'etre* behind Essentiality Certificate, amongst others, is likely improvement of doctor-patient ratio and access to healthcare for the population in the attached hospital. As a matter of fact, the need would get bigger due to the failure of the new medical college to fulfil the scheme in a time bound manner in right earnest. That entails in enhancing the mismatch of demand and supply ratio of doctors required to achieve the medical manpower of the State. It would not be in public interest nor appropriate for the State

Government to remain a mute spectator and not move into action when the college miserably fails to translate the spirit behind the Essentiality Certificate within a reasonable time. By no stretch of imagination, five years period, to fulfil the minimum requirement and standards specified by the MCI, can be countenanced.

23. Article 47 of the Constitution of India encompassed in Directive Principles of State Policy, enjoins the State with a duty to provide for and ensure good public health and a constant endeavour to improve the same to effectuate the fundamental right to life guaranteed by the Constitution to all. Thus understood, the State's duty under Article 47 is to act as an *"enabler"* for the wholesome exercise of right to life. A right to have access to proper public health care would be of little value if the State does not create the requisite conditions for proper exercise of such right. Access to medical college and hospital is, no doubt, a part of the said conditions. In ***Paschim Banga Khet Mazdoor Samity & Ors. vs. State of West Bengal & Anr.***[17], this Court observed that it is the *"Constitutional obligation of the State to provide adequate medical services to the people.* ***Whatever is necessary for this purpose has to be done."***

17 (1996) 4 SCC 37

24. What is necessary in the present factual matrix, as discussed above, is for the State to assess the dire need of medical infrastructure within the State or the locality, as the case may be. The very fact that an Essentiality Certificate is issued in the first place, in itself, is a testimony of the "*essentiality*" of such infrastructure. The authority of the State to grant Essentiality Certificate is both power coupled with a duty to ensure that the substratum of the spirit behind the Certificate does not disappear or is defeated. The exercise of power and performance of duty with responsibility and in right earnest must co-exist. Notably, the duty under Article 47 is, in the constitutional sense, *fundamental* in the governance of the State. This duty does not end with mere grant of a certificate, rather, it continues upto the point when *essentiality* of basic medical infrastructure is properly taken care of within a reasonable time frame. Any future application for such certificate, be it by the present appellant (in terms of directions in this judgment) or by a different applicant, must be dealt with accordingly, and supervision of the State must continue to ensure that the purpose and substratum for grant of such certificate does not and has not disappeared.

25. We are conscious of the view taken and conclusion recorded in ***Chintpurni Medical College*** (supra). Even though the fact situation in that case may appear to be similar, however, in our opinion, in a case such as the present one, where the spirit behind the Essentiality Certificate issued as back as on 27.8.2014 has remained unfulfilled by the appellant-College for all this period (almost six years), despite repeated opportunities given by the MCI, as noticed from the summary/observation in the assessment report, it can be safely assumed that the substratum for issuing the Essentiality Certificate had completely disappeared. The State Government cannot be expected to wait indefinitely, much less beyond period of five years, thereby impacting the interests of the student community in the region and the increased doctor-patient ratio and denial of healthcare facility in the attached hospital due to gross deficiencies. Such a situation, in our view, must come within the excepted category, where the State Government ought to act upon and must take corrective measures to undo the hiatus situation and provide a window to some other institute capable of fulfilling the minimum standards/norms specified by the MCI for establishment of a new medical college in the concerned locality or within the State.

Without any further ado, we are of the view that the appellant-College is a failed institute thus far and is unable to deliver the aspirations of the student community and the public at large to produce more medical personnel on year to year basis as per the spirit behind issuance of the subject Essentiality Certificate dated 27.08.2014. To this extent, we respectfully depart from the view taken in ***Chintpurni Medical College*** (supra).

26. To complete the record, we may mention the argument of the appellant that the attached hospital of the appellant has now been taken over by the State Government recently for providing treatment to Covid patients. That, however, will be of no avail to answer the matter in issue. We do not intend to dilate on this argument any further.

27. Taking overall view of the matter, in the facts of the present case, we uphold the order of the High Court rejecting the subject writ petition filed by the appellant-College, whereby it had assailed the order of the State Government dated 5.9.2019, withdrawing the Essentiality Certificate dated 27.8.2014. At the same time, we reiterate the liberty given by the High Court to the appellant-College to forthwith remove all the deficiencies pointed

out by the MCI in its order dated 30.5.2019 and apply afresh for the Essentiality Certificate to the State Government and if that request is refused, to pursue appropriate remedy as per law being a fresh cause of action.

28. The appeal is accordingly dismissed being devoid of merits. No order as to costs. Pending applications, if any, are also disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

.....J.
(Sanjiv Khanna)

New Delhi;
July 31, 2020.