

(2003) 06 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No. 13135 of 2003 and W.P.M.P. No's. 16488 and 16489 of 2003

Adiparasakthi Charitable, Medical, Educational and Cultural Trust

APPELLANT

Vs

The State Government of Tamil Nadu

RESPONDENT

Date of Decision : 01-06-2003

Acts Referred:

Dentists Act, 1948 — Section 10, 10A, 10A(2), 20

Citation : (2003) 3 CTC 458 : (2003) WritLR 711

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : A.L. Somayaji, for V. Perumal, for the Appellant; S. Prabhakaran, Special Government Pleader (Education), for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner has come forward with this writ petition praying for a writ of certiorarified mandamus to call for the records of the first respondent

relating to the letter (D) No. 120 dated 29-01-2003 and quash the same and direct the first respondent to issue Essentiality Certificate to the

Petitioner Trust to establish the Dental College in the name and style of Adiparasakthi Charitable, Medical, Educational and Charitable Trust at

Melmaruvathur, Tamil Nadu.

3. The case of the petitioner is as follows:-

Adiparasakthi Charitable, Medical, Educational and Cultural Trust at Melmaruvathur, Tamil Nadu is registered under the Societies Registration

Act in the year 1978. The main object of the Petitioner/Trust is to establish, maintain, run and develop educational institutions, Schools, Colleges, Polytechnics, Medical and Engineering Colleges without any profit motive. The Petitioner Trust has been running several educational institutions like Higher Secondary Schools, Polytechnics, College of Science, Engineering Colleges, College of Pharmacy, College of Nursing and Paramedical Courses. The Petitioner Trust submitted applications to Dr. M.G.R. Medical University seeking affiliation for dental College at Melmaruvathur and the first respondent/State Government seeking to issue No Objection/Essentiality Certificate after providing all infrastructural facilities for establishing a Dental College. On 14-08-1997, Dr. MGR Medical University wrote a letter to the Petitioner Trust to obtain prior permission from the State Government as required under sub-section 5 of Section 5 of Tamil Nadu Dr. M.G.R. Medical University Act, 1987 as amended by Act 32 of 1990 at the first instance and then approach the University for issue of letter of affiliation for obtaining prior permission of the Central Government as required u/s 10-A (i) (b) (i) of the Dentists Amendment Act, 1993. On 15-09-1997, the Government of India has returned the Petitioner application for the below mentioned reasons namely (i) Essentiality Certificate regarding desirability and feasibility of the proposed dental college at the proposed site has not been given (ii) Consent of the University affiliation for the purpose of dental college has not been given and (iii) Details regarding the allocation of land where the proposed Dental college to be constructed. Though the petitioner has provided all infrastructural facilities, the 1st respondent/State Government has not passed any orders for issuance of essentiality Certificate. Dr. MGR University has granted letter of consent of affiliation pursuant to the resolution dated 28-04-2000. The petitioner has filed another WP No. 17779 of 2000 before this Court for a writ of Mandamus to direct the Union of India and Dental Council of India to process the application of the petitioner without insisting for Essentiality Certificate from the 1st respondent herein. On 11-10-2000, this Court passed an order directing the petitioner to approach the Union of India and Dental Council of India to appraise the facts. On 03-08-2001, the 1st respondent has intimated that a Committee was constituted to frame revised guidelines for issuance of Essentiality Certificate to start medical/ Dental Colleges by private organisation and stated

that on receipt of the report of the Committee, a decision would be taken by it on the application submitted by the petitioner. On 03-09-2001, the second respondent sent a communication informing the date of inspection of the committee on 08-09-2001. The Committee also inspected the College on 08-09-2001 and pointed out certain fresh lapses and called upon the petitioner to comply with the same. The petitioner has also immediately complied with all the said deficiencies pointed out by the Committee. On satisfaction of the deficiencies complied with by the petitioner, the first respondent has directed the petitioner only to submit bank guarantee for a sum of Rs. 150 lakhs in favour of Dental Council of India. The petitioner has also furnished bank guarantee for the said amount on 29-10-2002. Thus, the petitioner has complied with all the requirements pointed out by the 1st respondent, but the 1st respondent has not passed any order for issuance of Essentiality Certificate which resulted in filing WP No. 45104 of 2002 before this Court seeking for a writ of mandamus to direct the 1st respondent herein to issue Essentiality Certificate. This Court passed an order on 19-12-2002 in the said writ petition to consider the request of the petitioner institution taking note of the bank guarantee furnished by the petitioner and pass orders subject to the petitioner/Trust having satisfied any other requirements for grant of Essentiality Certificate within a period of two weeks. On 29-01-2003, the 1st respondent erroneously rejected the request of the petitioner on the ground that (i) Shortage of lecturers in Anatomy, Physiology and Bio-chemistry wings (ii) No separate hostel has been provided for men and women (iii) Optimum Dentist population ratio in the State is 1:20000 which has reached the level of 1:17648 during the year 2000 and (iv) Already four dental colleges are functioning in the District, hence there is no desirability or feasibility to establish another dental college and the impugned order is challenged in this writ petition.

4. Mr. A.L. Somayaji, learned Senior counsel appearing for the petitioner submitted that the order of rejection passed by the 1st respondent is based on imaginary ground, which is liable to be set aside since the Petitioner/Trust has complied with all the norms prescribed by Dental Council of India; that after complying with all the norms and regulations issued by Dental Council of India, the 1st respondent has directed the

Petitioner/Trust to furnish Bank guarantee for Rs. 150 lakhs which was also furnished by the Petitioner/Trust as such the rejection is invalid; that the

Petitioner/Trust has filled the Lecturers for the post of Anatomy, Physiology and Bio-chemistry with qualified hands and communicated the same to

the 1st respondent even prior to the passing of the impugned order; that separate hostel facilities are also provided for men and women; that the

1st respondent has erroneously considered the dentist population ratio relating to the period 2000 and rejected the application in the year 2003

without taking into account of the proportionate increase in population; that the Essentiality Certificate to be issued by the 1st respondent is with

regard to the location, desirability of establishing the institution at that location and the feasibility thereof; that the reasons given by the 1st

respondent/Government in the impugned order for rejecting the petitioner's request are not relevant; that the existence of four dental colleges in

Kancheepuram District cannot be a criteria for rejection as students for professional courses are attracted from other States as well and it need not

be confined to Tamil Nadu State alone; that the Petitioner Trust has already constructed building with hostel facilities; that the conditions imposed

by the first respondent by its communications on various dates at long intervals were complied with and the last condition of furnishing bank

guarantee for a sum of Rs. 150 lakhs in favour of Dental Council of India also complied with as early as October 2002 and prayed for quashing

the impugned order of the respondent.

5. The learned Senior counsel appearing for the petitioner relied on a unreported judgment of a Division Bench of this Court dated 23-04-2003 in

WP No. 38106 of 2003 etc., batch (H.E.T.C. Educational Society, rep. by its Director - Projects, Chennai - 16 and others Vs. State of Tamil

Nadu, rep. by its Secretary, Health and Family Welfare Department, Chennai - 9) wherein in Paragraphs 12, 13, 21, 22 and 28 it was held thus:-

12. After the decision of the Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and

Others, the law laid down in that decision having been reiterated in the case of Jaya Gokul Educational Trust v. Secretary to Government Higher

Education Department 2000 (5) SCC 221, it is now settled law that in the matter of grant of permission for establishing new colleges for the

disciplines which are governed to All India Council of Technical Education Act, Indian Medical Council Act and Dentists Act, those central

statutes occupy the field as those Central Laws are relatable to Entry 66 of List I and Entry 25 of List II. The permission of the State Government

independent of the Central enactment is therefore no longer necessary.

13. The role of the State Government, after the amendments effected to these enactments in the year 1993 vis-a-vis establishment of and

enactment of capacity of the institutions in the disciplines covered by these Acts, is now not a primary role, but a subsidiary and derivative one

confined to the consideration of desirability of establishing and assessment of the feasibility at the location chosen by the institution. That role has

been assigned to the States/Union territories in the Rules/Regulations framed by the respective councils under those enactments.

21. The Dental Council has not prescribed any guidelines to guide the State Governments while considering the application for grant of Essentiality

Certificate. The only guidance available in the Regulation, regarding suitability of the location is the requirement that it be in proximity of a medical

college or be within 10 kms from a General Hospital with atleast 100 beds, and with which it has a tie up. In the absence of any other guideline in

the Regulations, the State/Union Territory has to choose for itself criteria which are consistent with the aims and objects as also provision of the

Dentists Act, Rules and Regulations made thereunder for determining the desirability and feasibility. The criteria chosen be uniform, non arbitrary,

should be relevant, and should be reasonable.

22. The certificate to be issued by the State is with regard to location- the desirability and establishing the institution at that location, and the

feasibility thereof. The location chosen by the applicant may be found to be desirable, but the establishment of the institution at that location may

not be feasible, and vice versa. Desirability and feasibility should coincide in relation to the chosen location.

23. Though the term "desirable" would appear to open itself to subjective considerations, a decision thereon cannot be left to the caprice and whim

of the State Government. The desirability or otherwise should be based on objective criteria. It would be open to the State Government to prepare

a perspective plan for it's own guidance for selecting locations for the proposed

new colleges. Such a plan however cannot shut out consideration of the location proposed by an applicant, as the final decision to grant or not grant permission to establish the College is that of the Central Government.

In this case, the petitioner society requested for issuance of Essentiality Certificate which was rejected by the State Government. Dr. MGR

Medical University also rejected the request for affiliation. The said two Orders have been challenged by two separate writ petitions by the Society

on the ground that the hospital with which the proposed college had a tie up was 12 kilometers away i.e., beyond the distance of 10 kilometers

prescribed u/s 10(A) of Dentists Act, the required staff has not been provided, failure to furnish Bank guarantee before the Government of India

and already seven private Dental colleges are functioning in the District as well as adjacent District. The Division Bench has held that the reasons

given by the State Government in the impugned order cannot be said to be relevant and the State is not required to decide as to whether the

facilities to be provided etc., are in conformity with the regulations which are for appraisal by the Dental Council of India and the Central

Government. Number of Colleges are located in and around the District cannot be a reason for rejection and held undesirable. The Division Bench

further held that the Certificate to be issued by the State Government is only with regard to the location the desirability of establishing the institution

at the location and the feasibility thereof and set aside the Order passed by the State Government with a direction to consider the matter afresh in

the light of its direction within a stipulated period. The learned Senior counsel has submitted that the said decision is squarely applicable for the

case on hand and prayed to quash the impugned order and direct the first respondent to issue the Essentiality Certificate forthwith.

6. Mr. S. Prabhakaran, learned Special Government Pleader (Education) appearing for the respondents submitted that the impugned order is

perfectly valid. The learned Special Government Pleader reiterated the contents of impugned order and submitted that there is no feasibility and

desirability to establish Dental College as proposed by the Petitioner; that the request of the Petitioner has been considered in the light of norms of

the Dental Council of India and also the orders issued in G.O.Ms. No. 211

(health) dated 13-08-2001; that appointment of Lecturers for Anatomy, Physiology, Bio-Chemistry wings were not made by the Petitioner; that no separate hostel facilities has been provided for men and women; that the optimum Dentist Population ratio in the State should be 1:20000 whereas the ratio level has already reached 1:17648 during the year 2000 and four Dental Colleges are functioning in the District of Kancheepuram already and prayed for dismissal of the writ petition.

7. The petitioner submitted necessary applications for starting Dental College to Government of India, Government of Tamil Nadu and Dr. MGR

Medical University in the year 1996. Several communications were sent by the first respondent and Dr. MGR Medical University on various dates

between 1996 to 2002 and issued piecemeal directions to the petitioner to comply with the deficiencies and they were rectified, which details are

not required to be repeated. Dr. MGR Medical University has granted affiliation in August 2000 after filing writ petitions and strenuous efforts by

the petitioner. The Government of Tamil Nadu by its letter dated 03-08-2001 intimated the petitioner that it has constituted a committee to frame

revised guidelines for issuance of Essentiality Certificate and on receipt of the report of the said Committee a decision would be taken by the

Government on the application submitted by the petitioner. On 03-09-2001, the second respondent has intimated that a Committee would inspect

on 08-09-2001. Pursuant to the direction, the committee made an inspection and all the deficiencies pointed out by the Committee were also

complied with by the petitioner. After lapse of one year, on 09-08-2002, the 1st respondent herein has sent a communication with only direction to

deposit Rs. 150 lakhs in favour of Dental Council of India which was also complied with by the petitioner on 23-10-2002. In spite of providing

infrastructural facilities, appointment of staff and also deposit of Rs. 150 lakhs, the 1st Respondent/State Government has delayed in granting

Essentiality Certificate to the petitioner. Hence, the petitioner has filed WP No. 45104 of 2002 for a writ of mandamus to direct the 1st respondent

to issue Essentiality Certificate to the petitioner. This Court, by order dated 19-12-2002 directed the state Government to consider the request of

the petitioner after taking note of the Bank guarantee and pass orders for the grant of Essentiality Certificate subject to petitioner satisfying any

other requirements within two weeks. After the said order, the 1st respondent has passed the impugned order.

8. The learned Senior counsel appearing for the petitioner pointed out, relying on the affidavit and typed set of papers that the petitioner has

appointed lecturers for Anatomy, Physiology and Bio-chemistry wings as per the norms of Dental Council of India and separate hostel facilities has

been provided for men and women as such the two alleged deficiencies pointed out in the impugned order are unsustainable. The said fact was not

disputed by the respondents either by filing counter or by production of any records. One other deficiency mentioned in the impugned order is that

Dentists population ratio during the year 2000 was 1:17648 as such no Dental Colleges are required further. As rightly pointed out by the learned

Senior counsel for the petitioner, the impugned order has been passed in the year 2003 whereas the alleged ratio relied on is relating to the period

2000. Moreover, the respondents have failed to submit the Dentist Population Ratio relating to the period 2003 in which the impugned order was

passed. The last reason assigned for rejecting the request of the petitioner that there are four Dental Colleges already functioning in the

Kancheepuram District hence there is no desirability or feasibility to establish another Dental College as proposed by the petitioner.

9. The issue involved in this writ petition is as to whether the rejection of request for essentiality certificate is valid or not.

10. Issuance of permission to establish new Dental College is governed by Dentists Act. A person interested shall submit the scheme with the

Central Government. Dental Council India has to consider the scheme in terms of Section 10-A(7)(a) to (g), which runs as follows:-

Section 10-A(7)(a) to (g) -

(a) Whether the proposed authority or institution for grant of recognised dental qualification or the existing authority or institution seeking to open a

new or higher course of study or training would be in a position to offer the minimum standards of dental education in conformity with the

requirements referred to in Section 16A and the regulations made under sub-section (1) of Section 20.

(b) Whether the person seeking to establish an authority or institution or the existing authority or institution seeking to open a new or higher course

of study or training or to increase its admission capacity has adequate resources;

(c) Whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of study or training, or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme.

d) Whether adequate hospital facilities, having regard to the number of students likely to attend such authority or institution or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time limit specified in the scheme.

e) Whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such authority or institution or course of study or training by person having the recognised dental qualification;

f) the requirement of manpower in the field of practice of dentistry; and

(g) any other factors may be prescribed.

11. In exercise of powers conferred u/s 10-A read with Section 20 of Dentists Act, 1948, the Dental Council of India with the previous approval of the Central Government made Regulations which is called "Establishment of New Dental Colleges Regulations 1993". The scheme referred to in Clauses a and b of sub-section 2 of Section 10-A of the Act is part of Regulations. The said Regulation gives guidelines to Eligibility criteria, Qualifying Criteria, forms and procedures, submission of application, evaluation by Dental Council of India and grant of permission. The Regulation also contains annexure-I i.e., application for permission of the Central Government to establish a new dental college. Appendix I relates to course to be sanctioned yearwise for BDS admissions -40, Appendix II relating to Post to be sanctioned yearwise for BDS admissions - 60 and Appendix III relates to post to be sanctioned yearwise for BDS admissions - 100. In the said Regulations, eligibility criteria contemplates organisations which are eligible to apply for permission to new Dental Colleges. Qualifying criteria speaks that eligible organisation shall abide by the Dentists Act, 1948 and the Regulations framed thereunder and shall qualify to apply for permission to establish new dental colleges only if the below mentioned conditions are fulfilled.

- 1) That Dental Education is one of the main objects of the applicant
- 2) That a minimum of 5 acres of land and with constructed area as shown thereunder is owned and possessed by the applicant to set up the proposed Dental College
- 3) Essentiality Certificate relating to desirability and feasibility of having the proposed dental college at the proposed location has been obtained by the applicant from the respective State Government or Union Territory Administration.
- 4) That permission/letter of University's affiliation for the proposed dental college has been obtained by the applicant from a recognised University and that adequate clinical material is available for fulfilling the requirements of the syllabus and regulations laid down by the Dental Council of India.
- 5) That the applicant has a feasible and time bound programme to set up the proposed Dental College along with the required infrastructural facilities including adequate hostel facilities for boys and girls as prescribed by the Dental Council of India, commensurate with the proposed intake of students, so as to complete the Dental College within a period of four years from the date of permission.
- 6) That the Dental College will admit students only after the council has satisfied itself about the infrastructural and other facilities for starting B.D.S. Course and the College will admit students only after receiving the written permission from the Central Government.
- 7) That the applicant should be able to take admissions to the College within two years for grant of permission and should complete total development of the dental college within three years from the date of taking admissions
- 8) That the dental college should be an independent institution with full complement of staff, including the Principal/Dean.
- 9) That the applicant shall locate the proposed college in proximity of a Medical College and shall get an undertaking of the said Medical College to the effect that the said Medical College shall facilitate training to the students of the proposed Dental college in the subjects of medicine, Surgery and Allied Medical Sciences.

Where no Medical College is available in the proximity of the proposed Dental College, the proposed Dental College shall get itself tied up with a

General hospital which is having provision for atleast 100 beds and which is located within 10 KM radius of the proposed Dental College. It shall

be the duty of the applicant to produce evidence that the infrastructural facilities such as teaching, pre-clinical, para-clinical and allied medical

sciences are owned by the proposed Dental College itself.

10) That the applicant has a feasible and time bound expansion programme to provide additional equipments and infrastructural facilities.

11) The format of application is available in annexure-I. Nine enclosures are mentioned in the format of application shall be enclosed, in which

certified copy of the essential certificate is one among them.

12. It is evident from Clause 3 of Regulations that the State Government has to issue Certificate regarding feasibility of establishing the college at

the proposed location. No guidelines regarding desirability or feasibility is found either in the Regulation made by the Dental Council of India or in

the Act.

13. When I traced the meaning for desirability and feasibility, I find in Ramnath Iyer Law Lexicon that - desirable means work seeking or

advantageous, beneficial or wise; feasible means capable of being done, performed or effected that may be accomplished or carried out practically

possible. As per Websters 3rd International New Dictionary desirable means capable of arousing desire having the power to attract or bring into

demand; worth seeking of doing or advantageous or beneficial or wise. Feasible means capable of doing, executed, effected, capable of being

managed, utilised or dealt with successfully.

14. Applying the meanings as mentioned in Ramanath Iyer Law Lexicon and also Webster's 3rd New International Dictionary with Regulations 3,

one can easily come to a conclusion that desirability and feasibility of establishing college in the location shown by the applicant.

15. In H.E.T.C. Educational Society case mentioned above, the division bench of this Court in WP No. 38106 of 2002 batch has held in Para-5

of its order, which is extracted in para-5 above that desirability and feasibility should coincide in relation to the chosen location. The surroundings

of the proposed location are relevant for adjudging desirability; and feasibility would involve enquiry into such factors permissibility of the user of

the land, construction proposed is permissible under law.

16. The Honourable Supreme Court in the judgment reported in Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of

Tamil Nadu and Others, has held in Para-34 as follows:-

34. It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of

the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at

the proposed location should be obtained from the State Government.....

....For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State

Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The

essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of

a new medical college now rests with the Central Government alone.

17. In The State of Maharashtra Vs. Indian Medical Association and Others, the Honourable Supreme Court held in Para-9 and 18A as follows:-

9. "... The grant of approval or permission as contemplated u/s 64 of the Act is nothing but substantially a grant of Essentiality Certificate under

Para-3 of the Regulations insofar as it relates to location of the proposed medical college. The State Government while granting Essentiality

Certificate or permission to establish a new medical college acts as a sovereign and discharges its constitutional obligation....

18. A. That, the decision of the State Government to establish a government-run-medical college at a proposed location tantamounts to an

Essentiality Certificate under Para-3 of the Regulation to the extent of location of the medical college...

18. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, the Honourable Supreme Court has held in Para 248 as follows:-

248.I answer that all the Citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26.....

19. Hence, the essentiality certificate to be issued by the State Governments is only with regard to location chosen by the petitioner and not

beyond that.

20. In respect of feasibility and desirability of the location is concerned, the first

respondent/State Government has no objection. The objection of the State is that there are four Colleges in the District, shortage of lecturers, no separate hostel for men and women, Dentist population ratio already reached.

21. The learned Senior counsel Mr. Somayaji, relying on the records and also paragraph 25 and 26 of the affidavit submitted that College buildings

to an extent of one lakh square feet was already constructed, separate fully furnished hostel facilities have already been provided; that Lecturers for

Anatomy, Physiology and Bio-chemistry were already appointed, which factors are not disputed by the first respondent/State Government.

22. Under Regulations 5, the applicant is permitted to have a feasible and time bound programme to set up the proposed Dental College along

with the required infrastructural facilities including adequate hostel facilities for boys and girls as prescribed by the Dental Council of India,

commensurate with the proposed intake of students, so as to complete the Dental College within a period of four years from the date of

permission. The Regulation 6 says that the Dental College will admit students only after the council has satisfied itself about the infrastructural and

other facilities for starting B.D.S. Course and the College will admit students only after receiving the written permission from the Central

Government. The Regulation 7 stipulates that the applicant should be able to take admissions to the College within two years from the grant of

permission and should complete total development of the dental college within three years from the date of taking admissions. Thus, the Act and

Regulations permit the applicant to provide necessary facilities in respect of staff, equipment, accommodation, training, hostel etc., within the time

limit specified in the scheme. The Council while making its recommendations under clause (b) of sub-section 3 and the Central Government while

passing an order either approving or disapproving the scheme under sub-section 4 shall have due regard to the above factors whether the facilities

have been provided or would be provided within the time limit specified in the scheme. The State Government is not at all required to decide as to

whether sufficiency of staff or facilities provided in terms of Regulations or Act, which are for the Dental Council of India and Central Government

to decide.

23. The other ground that the Dentist population ratio already reached and there are four private Colleges in the District as such the establishment

of one more dental college is undesirable is not a valid reason for refusing the Certificate. The scope of the jurisdiction of the State Government is

with regard to the location i.e., the desirability and feasibility of establishing the College in the location shown and not beyond that. Hence, the said

objection is also untenable.

24. The refusal on the part of the first respondent/State Government to grant the essentiality Certificate in respect of the Medical College cannot

therefore be upheld, with the result the impugned order is quashed.

25. The petitioner has already established the infrastructure for Dental College and the report of inspection conducted by other authorities indicate

the petitioner trust has provided all facilities. The Dr. MGR University also granted letter of consent for affiliation after proper inspections. Hence, I

direct the first respondent to issue Essentiality Certificate within 30 days to the petitioner from the date of receipt of this order.

26. The writ petition is allowed. No costs. Consequently, connected WPMPs are closed.