
(2000) 11 AP CK 0068

In the Andhra Pradesh High Court

Case No : WA No. 1326 of 1999 and Batch

Govt. of A.P. and another

APPELLANT

Vs

Medwin Educational Society, Hyd. and others

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Constitution of India, 1950 — Article 254, 371
Indian Medical Council Act, 1956 — Section 10

Citation : (2000) 6 ALD 609 : (2000) 6 ALT 305 : (2001) 3 UPLBEC 2669

Hon'ble Judges : M.S. Liberhan, C.J.; Goda Raghuram, J.; B. Sudershan Reddy, J

Bench : Full Bench

Advocate : M/s. S. Venkat Reddy, K.G.K. Prasad, SC for NTR University of Health Sciences, S. Niranjana Reddy, B. Adinarayana, SC for Central Government, P.V.S.S.S. Rama Rao, Kodanda Rama, M.V. Ramana Reddy, K. Ramakantha Reddy, C. Nandigam Krishna Rao, L. Narasimha Reddy, Bodduluri Srinivasa Rao, Vilas V. Afzal Purkar, S. Niranjana Reddy, K. Narasimha Chary and V. Tulasi Reddy, for the Appellant;

Judgement

M.S. Liberhan, CJ

1. In these appeals the common question of fact and law have been raised.
2. The State having decided locations for establishment of medical colleges and dental colleges, constituted a committee headed by a sitting Judge of this Court with the other members i.e., the Director of Nizams Institute of Medical Sciences and the Vice-Chancellor of NTR University of Health Sciences. The committee was required to examine the applications in detail in accordance with the procedure provided and required to be followed.
3. The learned single Judge found that the function of the committee is part of quasi-judicial or executive functions of the State. The High Court Judge ought not to associate and function as head of such committee in view of the doctrine of separation of powers enshrined in Article 50 and further that it is not desirable for a sitting Judge to take part in the process of recommending eligible applicants

for grant of essentiality certificate. Participation of the Vice-Chancellor was faulted on the ground that the University being a separate entity having its own role at the time of granting affiliation, the Vice-Chancellor ought not to be associated with the committee: It was further found that Article 371-D and the Presidential Order thereunder have an overriding effect. The State Government has a say in the matter of determining the locations for establishment of medical and dental colleges.

4. The need for establishing the colleges under private management is not disputed. The action of the State in permitting medical colleges and dental colleges being established" was on an earlier occasion quashed by a Full Bench of this Court and confirmed by the Supreme Court on other grounds, not germane to the issues herein.

5. During the interregnum period Indian Medical Council Act, 1956 and the Dentists Act, 1948 were amended and the amendments came into force with effect from 27-8-1992. As a necessary consequence no new medical or dental college could be established except with the previous permission of the Central Government obtained in conformity with the law which provided substantive and procedural prescriptions. In 1998 the State Government after series of steps taken, committees constituted and the opinions obtained and on consideration of various factors, decided to pursue setting up of new medical and dental colleges in the private sector. Places for such establishment were identified. With a view to select amongst the applicants desirous to start the institution the State Government devised a scheme by appointing a screening committee to be headed by a sitting Judge of this Court to evaluate the applications. The Chief Justice of this Court named the Judge to be the Chairperson of the proposed committee which resulted in the constitution of the committee under challenge. The committee invited the applications for the places notified vide its notification dated 30.5.1998. Applications were received for establishment of the colleges at the places notified and also for places other than those notified and screening committee was constituted. After considering the applications, the screening committee recommended some institutions for the issuance of essentiality certificate by the State Government.

6. Persons, who were declined their request for grant of essentiality certificate, and even some who have not applied for it in pursuance to the notification, challenged the grant of essentiality certificate, constitution of the committee as well as the screening committee including challenge with respect to grant of certificates to particular institutions.

7. The term of the office of the screening committee was extended from time to time and additional locations were identified. By additional notification fresh applications were also invited by the committee.

8. Under purported compliance of the orders of this Court in Writ Petition No.24076 of 1998, Ranga Reddy district was added as one of the locations for

establishment of a college and the application of a society for the said location was sent to the committee for consideration. A fresh notification inviting applications was issued. This Court in exercise of writ jurisdiction further directed the committee to consider the case of Medwin Educational Society for issuance of essentiality certificate for establishment of medical college without the issuance of a fresh notification inviting the applications. Later, on the prayer of M/s. Share Medical Care, the order was suspended and under the common judgment under appeal the Writ Petition No.2810 of 1999 was allowed and G.O. Ms. No.46, dated 4-2-1999 was set aside. During the pendency of the appeal liberty was accorded to the State Government to process the case for grant of permission in accordance with the Rules as also liberty to consider the applications pending before it in accordance with the Rules. The State decided to request the committee to notify applications for grant of essentiality certificate as well as to consider all the applications which were pending before the committee for the said locations and forward its recommendation to the Government. Later more sites were located and the committee was requested to notify and invite applications and send its recommendation. As a culmination of various orders finally various locations identified for establishment of medical and dental colleges emerged.

9. Inherently and broadly the issues that arise for consideration before us are: (1) What is the proper, assigned and available role of the State Government in the matter of grant of essentiality certificate for establishment of Medical or Dental college, especially in the context and text of the operative constitutional, legislative and statutory provisions; (2) whether the constitution of a committee headed by a sitting Judge of this Court to assist the State Government in the matter of evaluating the applications and recommending to the State Government for grant of essentiality certificate is vitiated on account of the constitutional impropriety, impermissibility of associating a sitting Judge of the High Court with what is essentially an executive function of the State.

10. The legislative field with respect to "Education, including Technical Education, Medical Education and Universities" subject to the provisions of Entries 63, 64, 65 and 66 of List I; Vocational and Technical Training of Labour" is in the Concurrent List (Entry 25 in List III). Thus the legislative field is available to the Union or the State depending on the federal legislative principles of the concurrent field set out in Article 254 of the Constitution. Section 10A of the Medical Council Act, which deals with the question raised in the case, for expediency may be reproduced hereunder:

"(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a postgraduate

course of study or training), which would enable a student to such course or training to qualify himself of the award of any recognised medical qualifications; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government obtained in accordance with the provisions of this Section.

Explanation 1 :--For the purpose of this Section "person" includes any University or a trust but does not include the Central Government.

Explanation 2 :--For the purposes of this section "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in subsection (7), and submit the scheme together with its recommendations thereon (o the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (I) :

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being

heard;

Provided further that nothing in this subsection shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a scheme and the provisions of this section apply to such scheme, as if such scheme has been submitted for the first time under subsection (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been submitted, and, accordingly, the permission of the Central Government required under subsection (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

(7) 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 following factors namely :

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council u/s 19A or, as the case may be, u/s 20 in the case of post-graduate medical education;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college 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 medical college 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 medical college or course of study or training by persons having the recognised medical qualifications;

- (f) the requirement of manpower in the field of practice of medicine; and
- (g) any other factors as may be prescribed".

11. The Medical Council of India as well as the Dental Council of India (hereinafter referred to as "Medical Council" and "Dental Council" respectively) in exercise of statutory powers conferred on them framed new Medical College Regulations (hereinafter referred to as "Regulations, 1993") relating to establishment of new medical colleges and new Dental College Regulations, 1993 (hereinafter referred to as "Dental Regulations, 1993"). Annexed to the Regulations" are the schemes referred to in Sections 10A(2)(a) and (b) and the Rules of the respective Acts. The issues arising for adjudication, Regulations, 1993 as well as the schemes framed by the Medical Council and Dental Council are identical. One of the qualifying criteria to render an association eligible for permission to set up a new medical and dental college is to the following effect:

"Essentiality certificate regarding the desirability and feasibility of having the proposed medical college/dental college at the proposed location has to be obtained by the applicant from the respective State Governments or the Union Territory Administration and that the adequate clinical material is available as per Medical Council of India's requirements".

12. The Medical Council of India or the Dental Council of India under the scheme is required to deal with the evaluation in the first instance to establish the desirability and prima facie feasibility of setting up of the college at the proposed location along with the capability of the applicant to provide necessary resources and infrastructure for the same. The Council can seek for any information, clarification, or additional documents from the proposed applicant as considered necessary and may carry out the physical inspection to verify the information. In view of the above referred factual matrix and requirements of the scheme and the Act the following contentions are raised by the appellant:

(1) The State is well within its powers, under the constitutional scheme of federal structure as well as the role assigned to it under the Acts read with the Regulations and schemes thereunder, to identify locations within the State where the application for establishment of new, institution will be considered and essentiality certificates granted. The learned Counsel for the appellant contends that State is within its constitutional role and is entitled to determine the academic infrastructure and man power needs in the various areas within the State in its overall requirements. While identifying the places the requirement of particular locality's development, the magnitude of the need for education, infrastructure facilities available, need to be developed and various other relevant factors are within the exclusive knowledge and expertise of the State. The State is entitled to identify the locations in advance.

(2) In view of Article 371-D and A.P. Educational Institutions (Regulation of Admission) Order, 1974 (for short "the Presidential Order") the State has the bounded responsibility to achieve the inter-State balance and harmony in the

matter of provision of education opportunities for various regions of the State. Thus the Andhra Pradesh constitutes an exception to the general principles enunciated with respect to the role of a State in matter of establishment of colleges within the frame work of the Acts. The general principles laid down in *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , in view of the specific overriding effect of Article 371-D and the Presidential Order would not be applicable to the State of Andhra Pradesh.

(3) It was contended that the Acts are referable to the Entry 66 of List I or Entry 25 of List III. They have taken over the entire field with respect to establishment of new medical and dental colleges. The specific power for evaluating the scheme of an applicant in all particulars including the power to approve or disapprove the proposal of an applicant and the respective schemes themselves envisaging evaluation by the appropriate Council vesting in the Medical Council or the Dental Council and the Central Government the area of desirability and prima facie feasibility of setting up a college at the proposed location thus the State Government has no final conclusive or deterministic role in the matter of grant of essentiality certificate is the contrary contention.

(4) Since every applicant and association is at liberty to submit an scheme proposing to establish a college at a location of its choice it is for the State Government to consider grant of essentiality certificate only on the ground of desirability and feasibility in the context of location and that too when the views of the State are not final but subject to the evaluation initially by the appropriate Council and thereafter by the Central Government, the State Government cannot be assigned with the power to fix the locations for grant of essentiality certificate.

13. The learned Counsel for the Medical Council of India submitted that the State is empowered to determine the location in advance. The State is empowered to grant essentiality certificate on consideration of desirability and feasibility grounds which were delegated to the State Government under Regulations, 1993 read with the scheme framed thereunder. The Medical Council or the Dental Council in view of their limited man power and resources on the one hand and the plentitude of resources including the expertise in the matter of knowledge of local conditions in the State on the other, as a matter of convention and practice, have not been considering any scheme for establishment of new institutions without being accompanied by an essentiality certificate from the State Government. The State must be held to have necessary powers to pre-determine the location as it is a workable practice. In the eventuality, right is conferred on the applicant to select location of its own choice, evaluation of application for determining the desirability and feasibility would not only be rendered difficult but virtually be an impossibility or impracticability. Pre-determination of the location would result in advantage of permitting planned development of the State in the area of establishment of medical education.

14. There is no challenge to any provisions of the Constitution or the provisions

of the enactments or the amendments thereto or the Regulations.

15. Processual procedure prescribed by the Acts, Regulations and authority for establishment of the institutions and to what extent the authorities and institutions are ordained to evaluate for establishment of them under the provisions of the Act runs thus:

16. As envisaged by Section 10(2)(a) every applicant is required to submit the application to the Central Government a scheme in accordance with the provisions of clause (b). On receipt of the said scheme the Central Government would refer the scheme to the appropriate Council for recommendation. Schemes are required to be submitted in the forms prescribed with particulars and the manner prescribed. Section 10(3) requires the Council to evaluate the scheme keeping in view the factors referred in the sub-section (7) and submit the scheme with its recommendation to the Central Government. The Central Government is obligated to repeat the exercise of considering the scheme keeping the above factors in view as envisaged by Section 10(4). The Central Government may approve the scheme or disapprove the scheme. It is only the approval of the Central Government which constitutes a permission u/s 10(1). The Councils have been ordained while making the recommendation to the Central Government to have due regard to the factors set out in Section 10(A)(7) which envisage the proposed medical college or the existing medical college-seeking to introduce a new or higher course of study or training institution to offer the minimum standards of medical education as prescribed by the Council - Whether the person seeking the permission has adequate financial resources to establish, whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities for proper functioning of the college, etc., have been provided or would be provided, whether adequate hospital facilities have been provided or would be provided, whether any arrangement has been made or programme drawn to impart the requisite course of study by the persons having recognised qualifications, appointment of man power in the field of practice of medicine and any other factors as may be prescribed. The consideration with respect to desirability and feasibility of starting an institution at the proposed location is inbuilt in the considerations by the Council while recommending for grant of permission to Central Government. It cannot be abdicated in favour of the State Government. It may be permissible for the Medical Council to ascertain the views of the State regarding these factors. Thus, in totality granting or rejecting of essentiality certificate is but a tentative and provisional determination on the issue and the factor of desirability and feasibility of starting the institution at the proposed location. The State's decision cannot have a conclusive or deterministic effect nor can constitute a ground to debar the application being considered by the Council and the Central Government. There is no gain saying that there are various factors which go beyond the widest interpretation on the facts, delegated to the State to consider with respect to granting of desirability and feasibility certificate need not be gone into as they are purely academic questions not required to be determined in these writ

petitions. The format of the essentiality certificate envisages the factors to be considered by the State Government including others are the number of institutions already existing in the State, number of seats available, number of doctors annually being produced in the State, registered with the State Medical Council, in Government service, vacant Government posts available in the rural and town area, number of unemployed according to the register of Employment Exchange, doctor-population ratio, justification for establishment of the institution qua the needs of the State, medical man power, status of any law operating in the State imposing restriction on admission of students who are not domiciled in the State.

17. In view of the law laid down in *Jaya Gokul Education Trust v. Commission and Secretary to Government, Higher Education Department* (2000) 7 SCC 231 and *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , read with the provision in Section 10A(4) of the respective Acts, the State cannot withhold the essentiality certificate on any policy consideration as the matter with respect to policy of establishment of new medical college now vests with the Central Government alone.

18. The contention of the Counsel for the appellants that the provision of Article 371-D or the Presidential Order issued postulate an exception to the general limitation on the power of the State Government in the matter of grant of essentiality certificate. Article 371-D empowers the President to provide by any order with respect to the State of Andhra Pradesh, having regard to the requirement of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education and different provisions may be made for various parts of the State. It would be reasonable to infer that the "special provision can be enacted only by Presidential Order and not by any other instrument. There is no provision that the Presidential powers can be exercised by the State Legislature or any other authority of the State. The Presidential Order nowhere provides for the establishment or regulating the establishment of medical or dental colleges or even the educational institutions either. In the absence of the Presidential Order, the State is left with the only powers inhering in it under the Constitution. The field having been covered by the Central Legislation, the State has no special powers under Article 371-D or a prerogative to identify the locations within the State for the establishment of new medical and dental colleges. The decision of the learned single Judge to the contrary cannot be sustained and is accordingly set aside.

19. It is evident from the facts on record that the various notifications issued by the State Government have identified locations for establishing Medical and Dental colleges. While some locations are with reference to Revenue Districts, some are specific towns or localities within Districts. No principle is discernible in the identification of the various locations. Consequently, it is quite possible that a few deserving and qualified institutions may have failed to apply for an

essentiality certificate. As a large number of new locations have hitherto been successively added by the State Government, by various notifications, the consideration of existing applications and the consequent grant or refusal of essentiality certificates could not have been on a rational basis founded on a holistic view of the relevant parameters. We come to this conclusion on account of the fact that as on date, the State Government's several notifications have identified 13 locations for Medical Colleges and 18 for Dental Colleges spread all over the State. Random consideration of applications in such dynamic and fluid state of specification of locations, cannot but result in imperfect consideration, leading to erroneous conclusions, inter se the various applicants or even per se.

20. We, therefore, hold that all such organisations eligible to apply for permission to set up new Medical and Dental colleges qua the "eligibility criteria" of the respective scheme appended to the Establishment of New Medical and Dental Colleges Regulations, 1993 shall be entitled to submit a scheme to the central Government u/s 10A(2)(b) of the Indian Medical Council Act, 1956 or Dentists Act, 1948, within four weeks from today together with an application to the State Government for grant of essentiality certificate. The State Government shall within 12 weeks from today consider and pass appropriate orders on all applications already made as well as fresh applications, granting or declining essentiality certificates, duly recording reasons therefor.

21. The conclusion arrived at by the learned single Judge with respect to the validity of the Constitution of the Committee being faulty on the ground of Vice-Chancellor being a Member of the Committee cannot be sustained. Pious reason is shown that since the University being separate identity and having distinct role to play in the matter of granting affiliation, it should not associate with the Committee of the State Government in the matter of considering the issuance of the essentiality certificate. The affiliation has to be decided at a different stage uninfluenced by the preceding steps under the provisions of the Act. The reasoning cannot be sustained. The University is an academic body invested with the function of awarding degrees consequent on a course of study offered by the Medical/Dental colleges. The Vice-Chancellor's participation in the committee constituted does not bar consideration of grant of essentiality certificate. The consideration of grant of essentiality certificate would be within the parameters assigned to the State Government, while granting affiliation will be for consideration under the provisions of the governing University Act and the statutes thereunder. Rather, we are of the considered view that the association of Vice-Chancellor would infuse the deliberations of the Committee with necessary academic expertise. They are two distinct Legislations with distinct roles. No function of any prejudice can be made at any point of time nor has been suggested. A bald statement, made that Vice-Chancellor has to consider the evaluation by itself is not a ground to find fault with the constitution of the Committee.

22. The learned single Judge found the Committee to be invalid on account of

association of a sitting Judge of this Court with a committee constituted to assist the State Government in evaluating the applications for grant of essentiality certificates for the establishment of new Medical and Dental colleges. It has two phases: (i) Whether the participation of the sitting Judge as a Chair Person renders the recommendation of the Committee for grant of essentiality certificates nugatory? and (ii) Whether the association of a sitting Judge with the Committee which essentially performs executive functions is prohibited by the Constitution?

23. We find no ground to hold that the association of a sitting Judge with such a Committee would per se render the recommendation invalid, especially when it is a tentative determination of the issue and it is for the Medical Council or Dental Council of India to independently consider the desirability and feasibility of the establishment of the proposed- institution. There is neither any public injury nor damage to public policy in making recommendation that is brought about by such association. Consequently, the recommendation cannot be faulted solely on the ground of association of a person on the question of morality of association.

24. A larger question has been raised to the effect whether the Constitution of India has expressly or by any necessary implication proscribed the association of a sitting Judge of a Court with particular committee, association and forum. Does the Constitution prohibit such association with a committee to assist the executive branch of the State in performance of its executive functions?

25. The learned Counsel for the Government contends that with a view to ensure transparency in the matter of evaluation of recommendation, a sitting Judge who was asked by the Chief Justice to discharge the functions in the Committee, was associated to chair the Committee. There is neither any bar in the Constitution nor it prohibits such an association. The Constitution does not prohibit the discharge of any other function by a sitting Judge. Establishment of institution is in public interest and has a crucial significance in public affairs. Barring the restriction of practice after becoming a permanent Judge, there is no other prohibition, expressed or necessarily implied from the provisions of the Constitution, a sitting Judge undertaking to discharge functions other than a Judge, which are in public interest. Since the sitting Judge has demitted the office on retirement, the question has become academic and the learned single Judge has only observed that it is not desirable that a sitting Judge of this Court should take part in the process of recommending eligible applicants for grant of essentiality certificate. Desirability or morality, as such, in its bald form is of no consequence in law. The Court is not concerned with the propriety of an action as such; though I may hasten to say that there is no impropriety involved in a Judge associating with the Committee. Judge's participation in any activity, other than the Judicial, assuming having become subservient to the Government, is a misconception and misnomer and is throwing a doubt on the character of a Judge and his temperament.

26. The questions, whether the participation of a Judge violates the provision of

judicial powers provided by Article 50, whether it is fair for a sitting Judge to participate in discharge of any other functions intrinsically not concerned with the judiciary, with respect to judicial decision even where a Judge is required to discharge the functions of a Chancellor, Visiting Chancellor, Visitor Member of other associations like Indian Law Institute, various commissions, participation in selection of various posts as an expert member, which distinctly have an executive function and substantially of executive character, the decision of whom is subject to judicial review, whether it would diminish from the high status of a sitting Judge of this Court, the desirability of participation in view of non-availability of time on account of high pendency of cases, existing delay in disposal of cases being proper or not, in my view are the matters required to be debated and decided.

27. All the above said factors have to be considered in the present complexity of modern State, the laws of classical doctrine of rigid separation of powers on the touch-stone that all the powers-legislative, executive and judicial - in the same branch leads to tyranny and despotism and in the modern context, overlapping of the functions and incidental trenching upon, become more inevitable. Without expressing any view and laying down any law with respect to the consequences of participation of a Judge in a committee, we leave it open, including without expressing any opinion on the passage relied on the judgment reported in Supreme Court Advocates-on-Record Association and another Vs. Union of India, and Justice H.R. Khanna's lecture on "Judiciary in India and Judicial Process".

28. Having regard to our declaration herein that a fresh notification, should be issued by the State Government calling for applications and that on receipt of applications, all the applications including the existing ones, should be considered de novo for the purpose of grant of essentiality certificate, the recommendations already made by the Committee constituted under G.O. Ms. No. 128, dated 30-4-1998 under the Chairmanship of Justice Ms. S. V. Maruthi, would no longer be operational. The validity of any such recommendations would no longer survive as a live issue to be considered by this Court.

29. For the foregoing reasons, we are of the considered view and hold (i) that the State is at liberty, while considering the grant of essentiality certificate under paragraph-3 of the "qualifying criteria" set out in the scheme for establishment of colleges, to consider the feasibility and desirability of establishing the proposed institutions in the proposed locations in terms of the factors set out in Form II of the Establishment of the New Medical Colleges Regulations, 1999. The other cognate factors are outside the domain of the State Government, having not been delegated to it; (ii) The grant or refusal of the essentiality certificate by the State Government constitutes but a tentative or provisional determination of the issue. It is the Medical or Dental Council which is empowered and obligated to independently consider the feasibility of recommending the grant of permission to the Centre for the establishment of medical college or dental college; (iii) Denial of grant of essentiality certificate by the State by itself is not

sufficient for the Council to refuse the recommendation for grant of permission to establish a college; (iv) Article 371-D does not empower the State to withhold essentiality certificate on a policy consideration with regard to location, (v) The State cannot provide a prior prescription of location by it to restrict the applications to such locations alone. The State is bound to consider the applications proposing locations other than the locations even if prima facie identified by the State for grant of essentiality certificate; we, however, hold that the State is at liberty to consider the grant of essentiality certificate within the parameters set out in view of the observations made in the judgment; (vi) The State is obligated to record reasons for grant or refusal to grant an essentiality certificate. Recording of reasons ensures that the same has been arrived on the basis of the germane, relevant and rational parameters within the jurisdiction and domain of the State Government; (vii) The scheme for establishment of colleges can be submitted without the State calling for the applications.

30. Undoubtedly the constitutional issue as to the legality or constitutional propriety of the participation/association of a sitting Judge with a Commission of Inquiry under the Commissions of Inquiry Act, 1952 or Chancellor or Vice-Chancellor of a University or as a Member/Chairperson of a Fay Revision Commission or a Member of a committee or any such similar associations with Governmental or quasi-Governmental institutions involving discharge of functions other than the functions enjoined by the Constitution upon a Judge while discharging his judicial office or functions which involve evaluation of policy choices by the executive branch of the State, is a matter of profound constitutional import and of recurring nature. Such a question has been raised in this lis. Having regard, however, to the fact that the sitting Judge of this Court who was associated as Chairperson of the committee constituted by the State Government to evaluate applications for grant of essentiality certificates for establishment of medical or dental colleges in the State, has demitted office on retirement and also having regard to the fact that we have held that the recommendations of the said committee are no longer operational in view of this Court having directed issuance of a fresh notification calling for applications and processing of the same, this issue is no longer a live issue warranting adjudication in the case on hand. We remind ourselves of the settled principle of constitutional adjudication that constitutional issues should not be considered by the Judicial branch as an academic issue. There is also a settled principle that if a lis could be decided on grounds other than constitutional issues the lis should be decided on the other issues. In the totality of the circumstances of this case and in the light of the above settled principles we decline to adjudicate upon the issue as to the constitutional propriety and validity of the participation of a sitting Judge with functions other than those enjoined upon such a Judge by and under the Constitution. These questions may fall for consideration in an appropriate case in future if warranted.

31. The appeals and the contempt case are disposed of as above. No costs.