

(2007) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 26377 of 2006

Sumandeep Charitable Trust

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and increase of Admission Capacity in Dental Colleges) Regulations, 2006 — Regulation 6(1), 6(2)
Dentists Act, 1948 — Section 20

Citation : (2008) 1 GLR 148

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Mitul K. Shelat, for the Appellant; Archana Rawal, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—In light of the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal. Rule. The learned A.G.P., appearing on behalf of respondent-authority is directed to waive service.

2. This petition under Article 226 of the Constitution challenges the decision dated 27-11-2006 of respondent-authority refusing to grant Essentiality Certificate and further calling upon the petitioner to fulfil six requirements enumerated in the communication dated 27-11-2006. The petitioner has prayed for following reliefs:

6. The petitioner, therefore, prays that-

(A) The Hon'ble Court be pleased to quash and set aside the impugned decision dated 27-11-2006, and thereupon, be pleased to issue an appropriate writ, order or direction commanding the respondent to grant the Essentiality Certificate in favour of the petitioner for its proposed dental college with an intake of 100

seats.

(B) Pending admission and final hearing of the present petition, the Hon''ble Court may be pleased to direct the respondent to place on record the relevant files pertaining to the decision impugned in the present proceeding.

(C) The Hon''ble Court be pleased to grant any other and further relief as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

3. The petitioner, a public charitable trust, is desirous of starting a Dental College with intake capacity of 100 seats. As per provisions of the Dentists Act, 1948 (the Act) no person can establish a Dental College or conduct a course of study or training except with prior permission of the Central Government obtained under the provisions of the Act. Hence, every person desirous of setting up Dental College is required to apply to the Central Government along with a scheme in accordance with provisions of the Act and the Central Government, in turn, makes a reference to the Dental Council of India, established under the Act, to make recommendation to the Central Government. u/s 20 of the Act, the Dental Council of India (the Council) is entitled to frame Regulations.

4. The Council has accordingly framed Regulations from time to time and the prevalent Regulations are called "The Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental College) Regulations, 2006" (the Regulations). The Regulations prescribe the mode and manner of moving an application before the Central Government accompanied by various documents. One such document being an Essentiality Certificate which is required to be issued in Form 4 by the State Government or the Union Territory Administration as the case may be.

5. Admittedly, on 30-5-2005, the petitioner requested the respondent-authority to issue an Essentiality Certificate. The petitioner was called upon by the respondent-authority to submit further documents which were supplied on 21-6-2005. Thereafter, the respondent-authority informed the petitioner vide communication dated 1-8-2005 that an Inspection Team of the State Government shall be visiting the site of the proposed Dental College on 2-8-2005. After the inspection took place on 2-8-2005, as the petitioner did not hear from the respondent-authority, on 21-11-2006 the petitioner called upon the respondent-authority to inform as to what has happened to the application for grant of Essentiality Certificate. The respondent-authority responded vide communication dated 27-11-2006.

6. The learned Advocate for the petitioner has submitted that the impugned communication/order dated 27-11-2006 is erroneous and bad in law as the respondent-authority is not entitled to call for the various details listed in communication dated 27-11-2006. It was submitted that the six requirements enumerated in the impugned communication have no relevance with the granting

of Essentiality Certificate as required by the Regulations, and therefore, the authority may be directed to issue Essentiality Certificate. Reliance was placed on the Apex Court decision in case of Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, with special reference to Paragraph No. 34 of the judgment to submit that the Essentiality Certificate is only in relation to desirability and feasibility of having the proposed Dental College at the proposal location and cannot be equated with obtaining prior permission of the State Government for establishing a new Dental College. That the said decision was in relation to establishment of a new Medical College, but the concept of an Essentiality Certificate would remain the same.

7. As against that the learned A.G.P., places reliance on the fact that the inspection team which is established under Resolution dated 31st July, 1997 of the State Government has in its report dated 23rd November, 2005 unanimously opined that Essentiality Certificate to the proposed Dental College may not be issued. That the Inspection Report dated 23rd November, 2005 which is available at Annexure R-III annexed to the affidavit-in-reply shows that there were various deficiencies, which would not permit issuance of an Essentiality Certificate. Attention was also invited to Regulation No. 6(2)(b) as well as Regulation No. 6(2)(e) of the Regulations read with proforma Form No. 4 to submit that the respondent-authority was required to give full justification for opening of the proposed College as laid down in Column No. 10 of Form No. 4, and therefore, the respondent-authority was well within its right to call for various details enumerated in communication dated 27-11-2006.

8. Furthermore, inviting attention to the last Paragraph of the Certificate which reads as under:

It is further certified that in case the applicant fails to create infrastructure for the dental college as per Dental Council of India norms and fresh admissions are stopped by the Dental Council of India, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

It was submitted that when the State Government was required to certify that the State Government would take over the responsibility of the students already admitted in the College with the permission of the Central Government, the State Government was entitled to satisfy itself that the petitioner had the requisite means and infrastructural facilities to ensure that the petitioner-Institution would be in a position to discharge its liability towards students and the State Government is not called upon to absorb the students or undertake the responsibility of the students. It was, therefore, urged that no interference was warranted in the facts and circumstances of the case.

9. As can be seen from the impugned communication dated 27-11-2006, the said communication falls in two parts : the first part states that in light of Inspection Report of the Inspection Committee as the stated requirements are not fulfilled,

the application made by the petitioner to issue an Essentiality Certificate is rejected; the second part enumerates six items, and it is further stated that upon fulfilment of the said deficiencies the authority may consider the application of the petitioner. The six requirements enumerated are:

- (1) Hostel facilities as prescribed by Dental Council of India are not available;
- (2) No Objection Certificate from Gujarat University has been obtained, but affiliation has not been obtained;
- (3) Adequate number of Dental Chairs and units are not available at the Dental Hospital.
- (4) The Institution does not have adequate number of equipments and instruments.
- (5) The Institution does not have the necessary books and journals as per norms of Dental Council of India, and
- (6) The Institution does not have necessary teaching staff, non-teaching paramedical staff and non-teaching administrative staff.

10. In this context, a question would arise as to whether the aforesaid deficiencies can be termed to be deficiencies relevant at the stage of issuance of an Essentiality Certificate. Under Regulation No. 6 eligibility and qualifying the criteria have been prescribed. Sub-regulation (1) of Regulation No. 6 enumerates organizations who shall be eligible to apply for permission of the Central Government to set up a Dental College. Sub-regulation (2) of Regulation No. 6 talks of the conditions which are required to be fulfilled for qualifying to apply for permission to establish a Dental College. In other words, an organization which is eligible to apply under Sub-regulation (1), has to fulfill conditions (a) to (k) laid down under Sub-regulation (2) of Regulation No. 6 for qualifying to make an application. An Essentiality Certificate in Form No. 4 is part of condition No. (e) of Sub-regulation (2) of Regulation 6 and the said clause reads as under:

(e) an Essentiality Certificate in Form 4, as annexed, regarding No Objection of the State Government or Union Territory administration for the establishment of the proposed Dental College at the proposed site and availability of adequate clinical material as per the Council's Regulations have been obtained by the applicant from the concerned State Government or Union Territory administration.

11. On a plain reading the said clause requires the State Government to issue a No Objection Certificate for the establishment of the proposed Dental College at the proposed site and availability of adequate clinical material as per the Council's Regulations. The Essentiality Certificate has to be issued in prescribed Form No. 4 which reads as under:

FORM 4 [See Regulation 6(2)(e)] Subject : Essentiality Certificate

No....

Government of.... Department of Health Dated, the....

To The

(applicant)

Sir,

The desired certificate is as follows:

- (1) No. of Institutions already existing in the State.
- (2) No. of seats available or No. of dental surgeons being produced annually.
- (3) No. of dental surgeons registered with the State Dental Council.
- (4) No. of dental surgeons in Government service.
- (5) No. of Government posts vacant and those in rural/difficult areas.
- (6) No. of dental surgeons registered with Employment Exchange.
- (7) Dental Surgeon population ratio in the State.
- (8) How the establishment of the College would resolve the problem of deficiencies of qualified dental personnel in the State and improve the availability of such dental manpower in the State.
- (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.
- (10) Full justification for opening of the proposed College.
- (11) Dental surgeon-patient ratio proposed to be achieved.
- (12) Copy of the Inspection Report in connection with the Inspection carried out by the State Government for grant of permission for setting up a new Dental College is to be attached.

The (Name of the person)...has applied for establishment of a Dental College at.... On careful consideration of the proposal, the Government of...has decided to issue an Essentially Certificate to the applicant for the establishment of a Dental College with.... (No.) seats.

It is certified that:

(a) The applicant owns and manages a...bedded hospital which was established in....

or

The proposed Dental College is located in the proximity of.... Medical College recognised by M.C.I, and has also obtained an undertaking from the said Medical College that would facilitate training to the students of the proposed Dental

College in the subject of Medicine, Surgery and allied Medical Sciences.

Since, no Medical College is available in the proximity of the proposed Dental College, the proposed Dental College has got itself tied up for...years with a Government General Hospital (...) which is having provision for...beds and which is located within 10 km, of radius of the proposed Dental College till they have their own hospital in the same premises. It shall be the duty of the applicant to produce evidence that the infrastructural facilities such as teaching, pre-clinical, para-medical and allied medical sciences are owned by the proposed Dental College itself.

(b) The applicant owns and manages a Dental Clinic with...chairs,

(c) It is desirable to establish a Dental College in the public interest.

(d) Minimum 30 out-door Dental patients per day are available to begin with.

(e) The credibility and the financial status of the applicant has been verified.

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

12. Various columns prescribed in Form No. 4 go to show that the Essentiality Certificate primarily relates to the need or the necessity of setting up the proposed Dental College at the proposed location in the State. The involvement of the State Government is primarily to ensure that there is no lopsided establishment of Dental Colleges with concentration in a particular area, coupled with the total requirement of number of Dental Surgeons in State with reference to and in proportion to the total population of the State. This becomes abundantly clear when one considers the use of the phrase "availability of adequate clinical material" employed by Clause (e) of Sub-regulation (2) of Regulation No. 6. The learned A.G.P., has very fairly pointed out that the term "clinical material" has a technical connotation insofar as it relates to field of medicine, including dental. In simple terms, it only refers to availability of adequate number of patients who can be treated by the students of the proposed Dental College. Therefore, the emphasis in Form No. 4 qua the number of existing hospitals in the proximity of the proposed Dental College. The form has also prescribed the radial area from the proposed Dental College within which the proposed Dental College can attach itself either with existing hospital or have an existing hospital of its own for the purposes of ensuring availability of adequate clinical material.

13. In the circumstances, it is apparent that the impugned communication has failed to take into consideration the requirement of Clause (e) of Sub-regulation (2) of Regulation 6 of the Regulations and the prescribed form of Form No. 4 while rejecting the application made by the petitioner. At this stage, it is

necessary to record and take note of the fact that in the impugned communication dated 27-11-2006, the respondent-authority, while rejecting the application to grant Essentiality Certificate has referred to and relied upon the Inspection Report and the reasons stated therein, but none of the reasons stated in the Inspection Report have even been summarized in the impugned communication/order, nor is it the case of the respondent-authority that the Inspection Report was furnished to the petitioner-Institution to meet with the reasons recorded in the Inspection Report.

14. Insofar as the second part of the communication/order dated 27-11-2006 is concerned wherein the respondent-authority has made a requisition of six enumerated items, suffice it to state that the said requisition, prima facie, is not germane to the grant of an Essentiality Certificate as required by Regulation No. 6(2)(e) and prescribed Form No. 4.

15. However, if the last Paragraph of Form No. 4 on which reliance was placed by respondent-authority is taken into consideration, the respondent-authority will have to establish that the requisition of six enumerated items is relevant for the purpose of issuance of the certificate in the prescribed format. Admittedly, the impugned communication has not even referred to either the said Paragraph of Form No. 4 or the provisions of Regulation 6(2)(e) of the Regulations. Hence, the impugned communication dated 27-11-2006 cannot be permitted to stand and operate.

16. Though, the communication does not refer to any other Regulations or requirement of any statutory provision, in the affidavit-in-reply the respondent-authority has referred to Regulation 6(2)(b) of the Regulations to submit that the applicant has to show that the applicant has a feasible and time bound programme to set up the proposed Dental College along with the required infrastructure facilities in respect of buildings including adequate hostel facilities for boys and girls as prescribed by the Dental Council of India, Dental and allied equipment, faculty and staff commensurate with the proposed intake of students, so as to complete the Dental College within a period of four years from the date of the grant of permission in support of the impugned communication. Suffice it to state that the respondent-authority has failed to distinguish itself from the Central Government and the Council. When the Regulation talks of an applicant it talks of an applicant who moves the application before the Central Government to set up a Dental College as per Regulation No. 6 of the Regulations. It does not talk of the applicant to the State Government seeking grant of Essentiality Certificate. Furthermore, Regulation No. 6(2)(b) specifically provides that the various facilities listed therein have to be completed within a period of four years from the date of grant of permission. Hence, on this count also, the stand of the respondent-authority is not warranted and the respondent-authority has erred in reading the requirement of Regulation 6(2)(b) of the Regulations as being a pre-requisite condition before an Essentiality Certificate can be issued.

17. In the aforesaid facts and circumstances of the case, the impugned

communication dated 27-11-2006 is hereby quashed and set aside. The application moved by the petitioner-Trust for grant of Essentiality Certificate shall be processed by the respondent-authority from the stage at which the communication dated 27-11-2006 was issued, and while processing the application, the respondent-authority shall bear in mind what is stated hereinbefore.

18. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.