

(2006) 08 MAD CK 0004

In the Madras High Court

Case No : Writ Appeal No. 3409 of 2003 and W.A.M.P. No. 5472 of 2003

The Government of Tamilnadu

APPELLANT

Vs

G.B. Trust

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Land Reforms Act — Section 37B

Citation : (2006) WritLR 705

Hon'ble Judges : V. Ramasubramanian, J;D. Murugesan, J

Bench : Division Bench

Advocate : A. Arumugham-AGP, for the Appellant; K.N. Nataraj, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Aggrieved by the direction issued by the learned Single Judge in the writ petition, the present writ appeal has been filed

by the Secretary, Health and Family Welfare Department and Director of Medical Education, Tamil Nadu. The only challenge in the writ appeal is

that the learned Single Judge ought not to have directed the appellants to issue essentiality certificate and even if this Court is satisfied with the case

of the respondent-Trust, it ought to have directed the appellants only to consider the application for essentiality certificate, as ultimately it is the

State Government vested with the power to consider and dispose of the application.

2. The few facts that are relevant for the disposal of the writ appeal, are as follows:

The respondent-Trust applied to the State Government for the issue of essentiality certificate to start a Dental College and to offer B.D.S. Degree

Course in Viradanur Village in Madurai South Taluk in Madurai District on 22.12.1998. As the said application was not disposed of, the Trust again sent a reminder on 07.1.1999 and in spite of the said reminder, the application was not disposed of. Hence the Trust was constrained to approach this Court by filing W.P. No. 475 of 1999 seeking direction to dispose of the said application. By order dated 29.1.1999, this Court had directed the Government to dispose of the application and pass an order within a period of two months from the date of receipt of a copy of that order. As the said order was not again complied with, the Trust once again approached this Court by way of another W.P. No. 8384 of 2001 seeking for a direction to the State Government to dispose of the said application. However, this Court had dismissed the writ petition on the ground that the Trust had already obtained an order for the disposal of the application and successive directions are impermissible as the order is passed by this Court, should be complied with by the State Government. In the event the State Government are of the opinion that the application cannot be considered for certain reasons, it is always open to the State Government to question such orders by way of filing application for review, modification or clarification or Writ Appeal. Keeping the above in mind, the writ petition was dismissed giving liberty to the Trust to take out appropriate application for non compliance of the order. In view of the said observation, the Trust has filed Contempt Application No. 565 of 2001 alleging non compliance of the order of this Court made in W.P. No. 475 of 1999 dated 29.1.1999. While contempt application was pending, the State Government passed an order dated 27.11.2001 rejecting the application and in view of the disposal of the application, the contempt petition was closed.

3. The petitioner had again questioned the order of rejection dated 27.11.2001 by filing W.P. No. 24718 of 2001. In view of the rival claims as to the compliance of conditions required for essentiality certificate, this Court appointed an Inspection Committee consisting of the Dean, Madurai Medical College, Madurai and the Reader in Dental Surgery to inspect the site and submit a report with the assistance of the Revenue Divisional Officer, Madurai. The said committee had submitted the report on 25.9.2002 in favour of the Trust and in view of the report, learned Single Judge

directed the State Government to issue essentiality certificate within three weeks from the date of communication of the order.

4. We have heard Mr. A. Arumugham, learned Additional Government Pleader appearing for the appellants and Mr. K.N. Nataraj, learned Counsel appearing for the respondent.

5. It is well settled in law that this Court normally in exercise of power under Article 226 of the Constitution of India would desist to issue positive

direction for issue of essentiality certificate, as in the normal course, if the court finds that the educational institution is entitled for consideration of

application, the court would merely direct the Government to pass orders on the said application, after considering the request. But it is only a

general rule and there are certain exceptions. It is not, as if this Court has no jurisdiction or power to issue positive direction in a given case,

particularly when this Court comes to the conclusion that the State Government is purposely delaying the consideration of application or avoiding

to pass orders on the application for one reason or the other.

6. With the above principle in mind, let us examine the facts of this case. The facts narrated above would indicate that the Trust had approached

the State Government for the issue of essentiality certificate as early as on 22.2.1998. As the said application was not disposed of, the Trust was

constrained to approach this Court and obtained an order for disposal of the application within a period of two months. The said order was passed

on 29.1.1999. In spite of the direction, the State Government did not dispose of the application, which compelled the Trust to again approach this

Court with the similar prayer. Ultimately the Trust was forced to file contempt petition for disobedience of the orders of this Court and only

thereafter, the application was disposed on 27.11.2001. Taking into consideration of the above, while judging the veracity of the order impugned

in the writ petition, learned Single Judge appointed the Inspection Committee consisting of members being the Dean, Madurai Medical College,

Madurai, Reader in Dental Surgery, who are competent to inspect and submit report in the matter of issue of essentiality certificate for dental

college. The court was also cautious while giving direction, that the inspection should be carried on with the assistance of the Revenue Divisional

Officer, Madurai. As the report is in favour of the Trust, learned Single Judge

issued positive direction for the issue of essentiality certificate. It is in our considered view that the direction issued cannot be essential on the facts and circumstances of this case which we have narrated elaborately.

7. Even on facts, the application was rejected on 27.11.2001 only for non compliance of five conditions. For better appreciation of the reasons for rejection, we propose to extract the said order and the same is as under:

(1) Location:- The Trust has proposed to establish the Dental College at Nedungulam Municipal Zone, Madurai. It is an urban area. As per the guidelines the proposed location should be in a backward/rural area of the State.

(2) Land with constructed area:- As per the Dental Council of India norms the Trust should possess 5 acres of land with 16,000 sq.ft. built up area for 40 admissions. As per the Inspection Report the Trust possess only 8000 sq.ft. constructed area.

(3) Hospital and Tie-up facilities:- As per the Dental Council of India norms, the college shall be located in the proximity of a Medical College.

Where there is no Medical College the Trust should have tie up with a General Hospital with atleast 100 beds within 10k.m. radius of the proposed college. The Trust is running 150 bedded hospital. The site of the proposed college is 5 k.m. away from the said hospital and no Tie up Hospital arrangement has been sent.

(4) Bank guarantee:- As per Dental Council of India norms the Trust has not produced Bank Guarantee for Rs. 75.00 lakhs for 40 admission.

(5) Infrastructure facilities:- As per the Dental Council of India Norms, the applicant should produce evidence for having owned teaching pre clinical, para clinical and Medical Sciences infrastructure facilities. The Trust has not produce any evidence for this. Only 50% of staff were present at the time of inspection. Break up details of staff are not furnished. The details of other infrastructure facilities have not been furnished.

8. From the above order it is seen that the objection are mainly as to the location of the land construction of buildings for the college, staff quarters, tie-up with hospital and the Bank Guarantee. In so far as the location is concerned, the report has stated in paragraph 6(iii) that the college is located in rural area. It is also evident from the certificate issued by the Tahsildar, Madurai South Taluk, which is annexed at page 18 of the typed set of papers, wherein the Tahsildar had certified that the proposed Dental

College by GB Trust lying in Viradanur Village in Madurai South Taluk

in Madurai District, located in rural area. In so far as the construction of buildings is concerned, the committee had observed that the Trust had

constructed the building on approval by authorities for the college hospital, staff quarters and hostel and approved copy of the plan was also

annexed. In so far as the hospital and tie-up facilities are concerned, the inspection committee observed in paragraph 11(b)(ii) that the Trust has

own hospital arrangement with Bose Hospitals, 46, C.M.R. Road, Madurai having 150 bed hospital, which is 9 k.m. within the proposed Dental

College. The distance of 9 k.m. is as per the requirement for consideration of essentiality certificate. In so far as the other infrastructure facilities are

concerned, the inspection committee had observed that the Trust had provided all other facilities. The only requirement, the inspection committee

has pointed out is that there are insufficient books in the library. Except the above, the Trust has the facility and has complied with all requirements

prescribed by the State for consideration of essentiality certificate. In so far as bank guarantee is concerned, the learned single Judge has rightly

observed that the same could be furnished when once essentiality certificate is given. With the above back ground only the direction for the issue of

essentiality certificate was ordered. We entirely agree with the direction of the learned single Judge and we find no reason to interfere with that

order.

9. In this context, useful reference can be made to the judgment of the Supreme Court reported in Al-Karim Educational Trust and another Vs.

State of Bihar and others, . In paragraph 11, the Supreme Court had observed as follows:

11. In the matter of grant of affiliation, it is ordinarily for the State Government after consulting the Medical Council of India to arrive at a decision.

However, if it is found that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, this Court

would, though reluctantly, be constrained to exercise jurisdiction.

So also the decisions reported in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and

Another, and I.T.C. Ltd. v. State of Karnataka 1985 SCC 476.

10. Mr. A. Arumugham, learned Additional Government Pleader appearing for the

appellants however produced the communication from the

Director of Medical Education, addressed to the Special Government Pleader(Education) dated 2.12.2003. It is seen from the said communication

that the Trust cannot be granted recognition for the following three reasons:

(i) Whether the total extent of land possessed by the trust including the land in which the proposed Dental college and school of Nursing are to be

established comes under Land Ceiling Act and whether proper permission from the Commissioner of Land Reforms, Chennai-5 has been

obtained.

(ii) Whether the existing building and 150 bedded hospital are approved by CMDA regulations relating to floor space index, set backs, provision

for fire escape etc., and if so the order in which the CMDA's approval has been obtained may be furnished.

(iii) The distance between the proposed location of the college and the hospital may be furnished.

11. These reasons have already been answered by the Inspection Committee and the reasons are only invented for delaying the disposal of the

application. Learned Additional Government Pleader has also brought to our notice that the respondent/Trust had not obtained permission u/s 37-

B of Land Reforms Act. We are constrained to observe that these reasons had not been mentioned in any of the earlier proceedings by the State

Government, this Court cannot overlook the fact that the respondent/Trust had made application as early as in the year 1998 and it is yet to get

essentiality certificate, in spite of the recommendation of the Inspection Committee, appointed by this Court on 28.9.2002. The State Government

being an authority vested with the power to consider the application for the grant of essentiality certificate cannot be allowed to improve their case

at each stage, by pointing out the deficiencies even after this Court has directed for the issue of essentiality certificate. An institution, which

approached the State Government for the issue of essentiality certificate is entitled to rectify the deficiencies at one stroke. Piece meal intimation of

deficiencies is not in the interest of anybody, as it would always result in undue hardship to the institution. This Court also cannot overlook the fact

that the conditions for the grant of essentiality certificate, namely construction of buildings for the college, staff quarters, hostel, libraries, minimum

requirement of lands as well as the provisions of 150 bedded hospitals are all complied with by the Trust. When once the above compliance are made, the State Government must act in fairness to dispose of the application at one stroke on merits at the earliest possible time.

12. Under these circumstances, we are of the considered view that the positive direction issued by the learned single Judge, cannot be interfered.

Accordingly, the writ appeal is dismissed. No costs. Consequently, no order is necessary in W.A.M.P. No. 5472 of 2003 and the same is closed.