

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
**CIVIL APPEAL NO.2920 OF 2020**

**[@ SPECIAL LEAVE PETITION (C) NO. 30008 OF 2019]**

**THE STATE OF KERALA**

**... APPELLANT**

**VERSUS**

**V.N. PUBLIC HEALTH AND EDUCATION  
TRUST & ANR.**

**... RESPONDENTS**

**WITH**

**CIVIL APPEAL NO.2921 OF 2020**

**[@ SPECIAL LEAVE PETITION (C) NO. 1749 OF 2020]**

**ORDER**

Leave granted.

1. Civil Appeal No.2920 of 2020 arises out of the final judgment dated 5.12.2019 passed in Writ Appeal No.2443/2019 by the High Court of Kerala at Ernakulam, affirming the order passed by the Single Bench in Writ Petition [C] No.27266/2019.

2. The V.N. Public Health and Education Trust, respondent No.1, filed a writ petition questioning communication Ex. P-6 by which the State Government expressed its inability to consider the request made to issue the essentiality certificate to establish medical colleges in the private sector in Palakkad district. The Single Bench of the High Court vide judgment and order dated 19.11.2019 quashed the communication Ex. P-6, and directed the Government to issue an

essentiality certificate in the proforma on or before 30.11.2019. It was also directed that the MCI shall accept the essentiality certificate issued by the State Government in terms of the judgment as one received on time.

3. Yet another writ petition was filed by respondent No.1, *i.e.*, W.P. No.29098/2019 by which the University had rejected the request made by the respondent to grant consent for affiliation. The said writ petition is pending in the High Court. Prayer for interim relief against refusal to grant the consent for affiliation was rejected as per order dated 31.10.2019.

4. Yet another C.A. No.2921/2020 has been filed against the interim order dated 13.12.2019 passed by a Single Bench of the High Court of Kerala at Ernakulam in W.P. [C] No.34275/2019. In the writ application, a prayer was made to direct the Medical Council of India and Government of India to process the application filed by respondent No.1 without insisting for the essentiality certificate or the consent for affiliation. Prayer to grant interim relief was made to the aforesaid effect, and the same was allowed by the impugned order dated 13.12.2019 passed by the Single Bench; hence, the appeal has been preferred in the Court. Though it has been noted in the impugned interim order dated 13.12.2019 that the special leave petition is pending in this Court. The High Court has proceeded to direct the MCI/Union Government to process the application of respondent No.1 to establish a medical college without insisting for essentiality certificate and consent for affiliation by the University, subject to the outcome of the special leave petition which was filed.

5. We have heard learned counsel for the parties at length. Firstly, we would deal with the interlocutory order dated 13.12.2019 passed by the High Court in W.P. [C] No.34275/2019. The order is palpably illegal and could not have been passed. In view of the fact that in case any order was to be solicited, it was to be passed by this Court in the pending SLP, out of which CA No.2920/2020 arises.

6. It was absolutely improper for the High Court to pass such an order directing the Medical Council of India to process the application without consent for affiliation granted by the University and the essentiality certificate granted by the State Government. Both directions were illegal. It is pre-requisite for the Medical Council of India to process any application that the essentiality certificate and consent for affiliation are produced.

7. Apart from that, we find that pursuant to the refusal to grant consent for affiliation, W.P. [C] No.29098/2019 was filed. That was pending consideration. The High Court declined the interim order. The filing of the third writ petition was uncalled for.

8. The High Court ought to have decided the issue of essentiality certificate for which W.P. [C] No.27266/2019 was filed in the High Court with W.P. [C] No.29098/2019 regarding grant of consent for affiliation. The matter of permission to establish and/or recognition could not have been processed by the Medical Council of India/ Government of India without essentiality as well as

consent for affiliation.

9. The approach of the High Court in both matters cannot be said to be appropriate. Let the writ petitions, *i.e.*, W.P. [C] Nos.27266/2019 and 29098/2019, be decided analogous to avoid any conflicting decision as they are intertwined issues. As several considerations may be common, the grant of consent for affiliation and essentiality certificate may depend upon several factors. As per the guidelines of Government and of the University, various aspects are to be examined. By merely quashing of order based on policy, the grant of essentiality or consent for affiliation does not follow automatically. They have to be considered as per prevailing norms.

10. It is astonishing to note that the third salvo had been fired in the guise of filing the third writ petition despite the pendency of W.P. [C] No. 29098/2019 in the High Court and the S.L.P. in this Court. Filing of third writ petition being W.P. [C] No.34275/2019 was uncalled for. No interim order could have been passed, giving final relief and that too on an impermissible basis.

11. Thus, we quash the impugned interim order passed in W.P. [C] No.34275/2019 on 13.12.2019 and the judgment and order passed by the Division Bench in W.A. No.2443/2019 dated 5.12.2019 thereby affirming the decision of the Single Bench passed in W.P. [C] No.27266/2019 dated 19.11.2019. Let all the three writ petitions be heard together and be finally decided. No interim orders to be passed in any of the matters by the High Court. Let the writ petitions be

assigned to an independent Bench which has not dealt with the same earlier, to decide, in an objective manner, in accordance with law.

The appeals are accordingly allowed. No order as to costs.

.....J.  
(ARUN MISHRA)

.....J.  
(B.R. GAVAI)

**NEW DELHI;  
AUGUST 7, 2020.**

.....J.  
(KRISHNA MURARI)

ITEM NO.26                      Court 3 (Video Conferencing)                      SECTION XI-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No. 30008 pf 2019

(Arising out of common final judgment dated 05.12.2019 in W. A. No. 2443 of 2019 passed by the High Court of Kerala at Ernakulam)

THE STATE OF KERALA

Appellant(s)

VERSUS

V.N. PUBLIC HEALTH AND EDUCATION TRUST & ANR.

Respondent(s)

(IA No. 194104/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)(IA No. 5078/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ANNEXURES)

WITH

SLP (C) No. 1749/2020

(IA No. 9547/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 07-08-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE KRISHNA MURARI

For Appellant(s)                      Mr. Jaideep Gupta, Sr. Adv.  
Mr. Jishnu M. L., Adv.  
Ms. Priyanka Prakash, Adv.  
Ms. Beena Prakash, Adv.  
Mr. G. Prakash, AOR

For Respondent(s)                      Mr. Ranjit Kumar, Sr. Adv.  
Mr. Abdes Chaudhry, Adv.  
Mr. Meenesh Dubey, Adv.  
Mr. S. R. Setia, AOR

Ms. Beena Madhavan, Adv.  
(Appearance slip not given)

Mr. Gaurav Sharma, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are  
disposed of.

(JAYANT KUMAR ARORA)  
COURT MASTER

(JAGDISH CHANDER)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)