# Chintpurni Medical College And ... vs The State Of Punjab on 3 July, 2018

## Equivalent citations: AIR 2018 SUPREME COURT 3119, 2018 (4) KCCR SN 406 (SC) 2018 (8) ADJ 79 NOC, 2018 (8) ADJ 79 NOC

## Author: S.A. Bobde

## Bench: L. Nageswara Rao, S.A. Bobde

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

WRIT PETITION (CIVIL) No. 89 of 2018

CHINTPURNI MEDICAL COLLEGE
AND HOSPITAL & ANR. ... PETITIONER

Versus

STATE OF PUNJAB & ORS. ... RESPONDENT

JUDGMENT

S.A. BOBDE, J.

1. Chintpurni Medical College started in the year 2011 in the State of Punjab. This college is affiliated to Baba Farid University. It made an application to the Medical Council of India (hereinafter referred to as 'MCI') under Section 10(A) of the Indian Medical Council Act, 1956 (hereinafter referred to as 'the IMC Act') for establishing a new Medical College. The permission for the first batch was granted in the year 2011-12 on 30.06.2011. For the subsequent academic years i.e. 2012-13 and 2013-14, no renewal of permission was granted to the deficient in the inspections carried out by the MCI. For the academic year 2014-15, petitioner was granted Letter of Permission (LOP) under the orders of this court passed in W.P (Civil) No.469 of 2014.

Thereafter, no renewal of permission was granted to the petitioner for the academic year 2015-16. Petitioner college applied for the grant of recognition under section 11 of the IMC Act in the year 2015. MCI in order to determine whether the petitioner college fulfills the minimum eligibility requirements for grant of recognition under section 11 of the IMC Act, conducted three inspections. The First inspection was carried out on 16.12.2015 followed by second inspection on 25/26.02.2016

and the third one on 16.03.2016.

2. In all the three inspections carried out by the MCI, petitioner college was found to be deficient. The MCI concluded the college was deficient to the extent of 100%. The MCI, therefore, recommended to the Central Government, not to issue recognition to the petitioner college under Section 11 of the IMC Act. The MCI also made similar recommendations in respect of other colleges. Those Medical Colleges approached this Court by way of filing a batch of Writ Petitions. This Court directed the matters to be examined by the Oversight Committee constituted under the judgment of this Court delivered by the Constitution Bench in the case of Modern Dental College and Research Centre v. State of Madhya Pradesh1. Finally, the Oversight Committee directed the MCI to conduct inspections and further directed that if the Medical Colleges were found deficient, they (2016) 7 SCC 353 would be banned for a period of two years. Such a direction was also given in respect of the petitioner college. MCI conducted fresh inspection of the petitioner college on 07.03.2017 & again found the petitioner college deficient & accordingly recommended to the Central Government to debar the petitioner college from admitting students against the allowed intake for two academic years i.e. 2017-18 and 2018-19. The Central Government by its order dated 31.05.2017 debarred the petitioner college for a period of two academic years i.e. 2017-18 and 2018-19. This order was questioned by the petitioner in Writ Petition (Civil) No. 423 of 2017. By order dated 10.5.2018, this Court dismissed the Writ Petition (Civil) No.423 of 2017.

3. The present writ petition questions the withdrawal of the Essentiality Certificate dated 07.12.2010 and 15.02.2011 issued to the petitioner college by Respondent No. 1 under Section 10A of the IMC Act read with the Establishment of Medical College Regulations, 1999 (Hereinafter referred to as “Regulations”) framed under the Act. Regulations lay down the qualifying criteria for making an application to open a Medical College. One of the essential qualifications is that a person should obtain an Essentiality Certificate from the State Government where the college is proposed to be located in Form 2.

4. On 13.07.2017, MCI making an unusual request wrote a letter to the Secretary, Government of Punjab stating that it will take action only if the concerned college is closed down and the Essentiality Certificate is withdrawn by the State Government. The Government of Punjab by letter dated 24.7.2017 submitted that they are not in a position to withdraw the Essentiality Certificate for several reasons. The State Government stated that the doctor – patient ratio in the State of Punjab is 1:1440 approximately whereas the required ratio as per MCI norms is 1:1000. They said that they are committed to opening five new medical colleges in the State, it was not possible in these circumstances to conclude that there is lack of essentiality. They further said that it would not be possible to absorb the students from the petitioner college and this will adversely affect the interest of students. They requested for permission to facilitate shifting of the students to medical colleges in the other states without insisting on the withdrawal of Essentiality Certificate. The State thus declined to withdraw the Essentiality Certificate.

5. However, for reasons which are not clear, the State relied on proceedings of an earlier show cause notice dated 03.05.2017 calling upon the petitioner to show cause as to why the Essentiality Certificate should not be withdrawn, to do just the opposite. They passed an order dated 01.11.2017

and held that the college had made hollow claims for removing deficiencies and had failed to show cause why the Essentiality Certificate should not be withdrawn. Though several opportunities of personal hearing were afforded, the college had failed to rebut the findings of the inspection reports. Having found persistent deficiencies, the State Government directed the withdrawal of the Essentiality Certificate.

6. At this juncture, we might make it clear that no fault can be found with the orders of the State Government in observing the deficiencies in the functioning of the petitioner college. These deficiencies have resulted in the Central Government order dated 31.05.2017 debarring the petitioner college from taking any fresh intake for two years. As stated above, this Court has declined to interfere with such an order and accordingly, Writ Petition (Civil) No.423 of 2017 has been dismissed.

7. Shri Mukul Rohtagi, learned senior counsel for the petitioner, however contended that the State does not have the power to withdraw the Essentiality Certificate once granted. According to the learned senior counsel, the Essentiality Certificate is issued for the specific purpose of certifying the need for opening a new medical college in a State. Once such a need is certified and the college is established, there is no power conferred by the IMC Act or the Regulations to withdraw such a certificate except on the ground of fraud.

8. Before going into the merits of the submission, it is important to note that the State Government appears to have withdrawn the Essentiality Certificate acting under dictation of the MCI.

This is obvious from the letter dated 13.07.2017 referred to above. This by itself would vitiate the withdrawal of the Essentiality Certificate by the State, vide Anirudhsinhji Karansinhji Jadeja v. State of Gujarat 2 and Dipak Babaria v. State of Gujarat.3 The following passage from Wade and Forsyth in Administrative Law, 10 th Edition at p. 269 succinctly states the vice in such an action:

> “Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.”

9. The issue which arises in the present W.P is:

> whether the State Government has the power to withdraw an Essentiality Certificate once granted, and whether the power to do so is ultra-vires the Act and the Regulations framed thereunder.

> This issue needs to be decided since power assumed by the State to withdraw an Essentiality Certificate has drastic (1995) 5 SCC 302 (2014) 3 SCC 502 consequences on Medical Education in a State, which can only be controlled by and under the IMC Act.

Essentiality Certificate

10. It would, therefore, be necessary to see the origin of the requirement that a College must have an Essentiality Certificate before it receives permission for its establishment. The Legislative scheme that imposes the requirement of an Essentiality Certificate is as follows:-

> Section 10A4 of the IMC Act requires the previous permission of the Central Government for establishing a Medical College or opening a new course of study or training. Every person or Medical College must submit to the Central Government a scheme as prescribed. The Central Government then refers the scheme to the MCI for its recommendations. The Medical Council is required to
>
> 10.A PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY -
>
> (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 of such course or training to qualify himself for the award of any recognised medical qualification; or
>
> (ii) increase its admission capacity in any course of study or training (including a postgraduate 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 purposes 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 postgraduate 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 sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Govt. 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 4 (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 (1):

> 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 sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under subsection (1).
>
> consider the scheme and satisfy itself by obtaining any particulars as are necessary and after having the defects if any removed, make its recommendations to the Central Government. The Central Government, may on receipt of the scheme, approve it conditionally or disapprove the scheme. Approval constitutes permission vide sub-
>
> section (4) of Section 10A of the IMC Act.

11. The power to permit the establishment of a Medical College is thus conferred on the Central Government by the IMC Act. The regulations referred to above, framed in the exercise of powers conferred under Section 10A read with Section 33 of the IMC Act (5) Where, within a period of one

year from the date of submission of the scheme to the Central Government under sub-section (1), 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 approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (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 under section 19A or, as the case may be under section 20 in the case of postgraduate 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 it 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 or 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 or 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.

> (8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

prescribe the qualifying criteria. These criteria lay down the eligibility to apply for permission to establish a Medical College. One of the criteria is that the person who is desirous of establishing a medical college should obtain an Essentiality Certificate as prescribed in Form 2 of the Regulations, certifying that the State Government/Union Territory Administration have no objection for the establishment of the proposed Medical College at the proposed site and availability of adequate clinical material5.

12. Form 2 in which the Essentiality Certificate must be obtained indicates the facts which are considered relevant for determining whether the establishment of a proposed college is justified. These factors are:-

> (1) Number of institutions already existing in the State. (2) Number of seats available or No. of doctors being produced annually.
>
> (3) Number of doctors registered with the State Medical Council.
>
> (4) Number of doctors in Government Service.
> (5) Number of Government posts vacant and those in rural/difficult areas.
> (6) Number of doctors registered with Employment Exchange.
> (7) Doctor population ratio in the State.
> (8) How the establishment of the college would resolve the problem of deficiencies of qualified medical
>
> (3) that Essentiality Certificate in Form 2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/Union Territory Administration.

personnel in the State and improve the availability of such medical 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) Doctor-patient ratio proposed to be achieved.

13. The concerned State Government is required to certify that it has decided to issue an Essentiality Certificate for the establishment of a Medical College with a specified number of seats in public interest, and further that such establishment is feasible. Importantly, the State Government is required to certify that if the applicant fails to create an infrastructure for the Medical College as per the MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of those seats that already admitted in the College with the permission of the Central Government. An amendment to the notification also requires a declaration that the applicant owns and possesses adequate land on which non-agricultural use of the land is permitted and on which a Medical College can be established. It further requires a declaration to the effect that the Hospital and Medical College have been granted completion certificate / building use certificate.

14. The Essentiality Certificate thus certifies that it is essential having regard to specified factors that the opening of the proposed college is essential in the State, in public interest. Further, that the applicant has the necessary land and building for running it. What is significant to note is that the law requires that an applicant must possess an Essentiality Certificate from the State Government mentioning therein that it is essential to have a Medical College as proposed by him. The purpose is interalia to prevent the establishment of a college where none is required or to prevent unhealthy competition between too many Medical Colleges.

15. Thus, the Legislative scheme for permission to establish a Medical College prescribes, as a qualifying criterion, that the applicant must have an Essentiality Certificate issued by the State Government. The State Government certifies the justification for establishing a proposed Medical College as a part of the Legislative scheme under the Act. It does not do so under any other law including a State enactment. The only purpose of the Essentiality Certificate is to enable the Central Government acting under Section 10A to take an informed decision for permitting the opening or establishment of a new Medical College. Once the college is established, its functioning and performance and even the de-recognition of its courses is controlled only by the provisions of the IMC Act and not any other law. The IMC Act, which is a Legislation under Entry 66 of List-I of Seventh Schedule of the Constitution of India is a complete code which governs the establishment, functioning, including maintenance of standards of education and even de-recognition of Medical Colleges vide Section 19 of the Act. The States are denuded of the Legislative Power to legislate on medical education under Entry 25 of the Concurrent List since Parliament has exercised its power under Entry 66 and enacted the IMC Act vide Dr. Preeti Srivastava v. State of Madhya Pradesh6.

16. It would be impermissible to allow any authority including a State Government which merely issues an Essentiality Certificate, to exercise any power which could have the effect of terminating the existence of a Medical College permitted to be established by the Central Government. This the State Government may not do either directly or indirectly. Moreover, the purpose of the Essentiality Certificate is limited to certifying to the Central Government that it is essential to establish a Medical College. It does not go beyond this. In other words, once the State Government has certified that the establishment of a Medical College is justified, it cannot at a later stage say that there was no justification for the establishment of the College. Surely, a person who establishes a Medical College upon an assurance of a State Government that such establishment is justified cannot be told

at a later stage that there was no justification for allowing him to do so. Moreover, it appears that the power to issue an Essentiality Certificate is a power that must be treated as exhausted once it is exercised, except of course in cases of fraud. The rules of equity and fairness and promissory estoppel do not permit this Court to take a contrary view.

(1999) 7 SCC 120

17. In this case, the reasons given by the State for rescinding the Essentiality Certificate are not relevant or germane to the establishment of a Medical College. They refer to the deficiencies in the functioning of a Medical College for a particular period. Deficiencies by their nature are curable and can be removed. To allow the State Government to withdraw an Essentiality Certificate and say that it is no more essential that there should be a college at all, would lead to gross arbitrariness since logically the existence of the Medical College would again be justified if the deficiencies are removed. The question of justified existence of a college and the irregular/illegal functioning of an existing college belong to a different order of things and cannot be mixed up. A certificate constitutes a solemn statement by an authority certifying certain conditions of things. Persons acting on such certificates are entitled to assume that the certificate will ensure and not be pulled out from under their feet for extraneous reasons. We find that none of the reasons for withdrawing the Essentiality Certificate pertain to factors which are certified as true in the prescribed Form 2, reproduced above.

Challenge to Conditions Introduced in Form 2 by the State

18. It is argued mainly on behalf of the State Government that the specified conditions which are imposed in the Essentiality Certificate empower the State Government to withdraw an Essentiality Certificate and the certificate has been withdrawn in exercise of the powers reserved under following conditions incorporated in Essentiality Certificate dated 07.12.2010:-

> “vii. The inspection of the institute shall be carried out on yearly basis upto the completion of the study of first batch of the students.
>
> Thereafter, the inspection shall be periodical after three years.
>
> …… xi. The Punjab Government will have the right to withdraw the Essentiality Certificate/No objection Certificate if the trust/society/applicant failed to meet any of the conditions contained therein…..7”
>
> 19. Shri Rohtagi, learned senior counsel submitted that Condition Nos. (VII) and (XI) reproduced (supra) have been introduced by the State Government on their own; they are not in Form 2 prescribed under the Regulations. In other words, the MCI Act and the Regulations do not confer any power on the State Government to carry out the inspection of the medical college or to withdraw the Essentiality Certificate, and the State has attempted to arrogate these powers to itself. According to the learned senior counsel, these conditions are ultra-vires the provisions of the Act and the Regulations.

> 20. Relying on the Condition No.(VII), the learned counsel for the State of Punjab, Ms. Uttara Babbar submitted that the State Government has the power to carry out inspections, since it is responsible for the students of the college which is shut down by the MCI or otherwise. If such inspections reveal any deficiencies, the State Essentiality Certificate dated 07.12.2010.

is entitled to withdraw the Essentiality Certificate. This submission cannot be accepted, the IMC Act and the Regulations under which the State Government has purported to issue Essentiality Certificate confers the power of inspection on any medical institution, college or hospital where any medical education is given, on Visitors/Inspectors appointed by MCI under Sections 178 and 189 of IMC Act.

21. The learned counsel for the State has not pointed out any power of inspection which is conferred on a State Government/Union Territory Administration either by the Act or by the Regulations. The State Government is designated by the Regulations only for the purpose of issuing an Essentiality Certificate to justify the establishment of a medical college within its territories and that too when approached by a person seeking to establish a medical college. There is no direct conferral of any power of general inspection on the State and neither can such a power be read into the Regulations nor be

17. INSPECTION OF EXAMINATIONS (1) The Committee shall appoint such number of medical inspectors as it may deem requisite to inspect any medical institution, college, hospital or other institution where medical education is given, or to attend any examination held by any University or medical institution for the propose of recommending to the Central Government recognition of medical qualifications granted by the University or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination, but shall report to the committee on the adequacy of the standards of medical education including staff, equipment, accommodation, training facilities prescribed for giving medical education or on the sufficiency of every examination which they attend.

(3) .....

18. VISITORS AT EXAMINATIONS (1) The Council may appoint such number of visitors as it may deem requisite to inspect any medical institution, college, hospital or other institution where medical education is given, or to attend any examination held by any University or medical institution for the purpose of granting recognised medical qualifications.

(2) Any person, whether he is a member of the Council or not may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) .....

(4) ..... implied as necessary to carry out an expressly conferred power which doesn't exist. In fact, it might be difficult to even construe that the IMC Act has delegated any powers to the State Government including that of issuing of an Essentiality Certificate. The IMC Act merely requires an applicant to obtain an Essentiality Certificate from the State Government to justify the establishment of a medical college. However, the Act prescribes the form in which such a certificate must be obtained from the State. Significantly, the form does not confer any power of inspection. The mere requirement of an Essentiality Certificate by the State as a qualifying criterion cannot imply the delegation of a power which must be express and clear. It is, therefore, clear that such power has been arrogated by the State without any justification and is likely to lead to a conflict with the power meant to be exercised by the Central Government and potentially, result in conflicting inspection reports. The condition imposed by the State Government is therefore ultra-vires the IMC Act and the Regulations.

22. It was submitted by the learned counsel appearing for the State of Punjab that since the Essentiality Certificate requires the State Government to assume responsibility of the students in case the college closes down, the State must be held to have an inherent right to withdraw the Essentiality Certificate. This argument must be rejected as fallacious since the consequence of withdrawing the Essentiality Certificate can only be that the college closes down, and the State must bear the burden of accommodating the students in another institution.

23. The learned counsel for the State of Punjab submitted that since the Essentiality Certificate certifies the availability of adequate clinical material for the proposed Medical College, as per the Regulations, the State has the necessary power of inspection of the college even after its establishment to ensure that there is adequate clinical material. This submission must also be rejected since the State is enjoined to certify adequate clinical material only at the time of proposal of the Medical College and not after it is established. But we find from the submissions that the State has misinterpreted the term 'adequate clinical material' completely. According to the State, "adequate clinical material" means "people" i.e. doctors, patients, staff etc. Whereas, the term is understood in the field of Medical Education to mean data about number of admissions, number of discharges, number of deaths, number of surgeries, number of procedures, X-rays and laboratories investigations. Thus, what the State is required to certify is the data available in the region to justify the establishment of the proposed Medical College. Obviously, for the purpose of justifying the existence of a Medical College, the State's claim that it must have the right to inspect a college after it is established to see whether there are adequate numbers of doctors, patients etc. to justify it's continued existence is completely hollow and unfounded. Condition No. XI

24. It was further contended by the learned counsel for the State that the power to issue a certificate carries a power to withdraw the same in a like manner as contemplated by Section 21 of The General Clauses Act, 1987. Section 21 of the said Act reads as follows:-

> "21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. – Where, by any [Central Act] or Regulations a power to [issue notifications] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions

(if any), to add to, amend, vary or rescind any [notifications] orders, rules or bye-laws so [issued]."

25. Section 21 has no application to a certificate since a certificate is neither a notification, nor an order, or rule or bye- law as contemplated by that Section. This Court has on several occasions held that where a statutory authority is enjoined to perform a quasi judicial function such as that of grant of registration to a political party or issue a certificate under the Income Tax Act, Section 21 has no application and confers no power to review such an Act because the party has violated a provision of the constitution of law, vide Indian National Congress (I) vs. Institute of Social Welfare 10 and Industrial (2002) 5 SCC 685 Infrastructure Development Corporation (Gwalior) M.P. Ltd. vs. Commissioner of Income Tax, Gwalior11.

26. In the Indian National Congress (I) case (supra), this Court held that where the law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi judicial authority. Also when the authority is required to act according to rules and not dictated by policy or expediency, the authority performs the quasi judicial function and not an administrative function.

27. On the above test, the function of the State Government in granting an Essentiality Certificate must be construed as a quasi judicial function. The Government is required to, while issuing the certificate in Form 2, to determine the justification and feasibility of opening the proposed college in the State. Towards this purpose, it is bound to enquire and determine the existence of several factors such as the number of existing institutions, the number of doctors becoming qualified annually, the number of doctors registered with the State Medical Council and employed in Government Service, registered with employment exchange etc. It must also determine the doctor population in the State, the doctor - patient ratio to be achieved and the impact of the proposed college on the availability of medical manpower in the State. The issuance of certificate must therefore be (2018) SCC Online SC 126 construed to be a quasi judicial act. The upshot is that such an act is not liable to be construed as an "order" contemplated by Section 21 of the General Clauses Act. Not being an order, and certainly not being a notification, rule or bye-law, Section 21 has no application whatsoever.

28. Moreover, no provision of the IMC Act confers any power on the State Government or Union Territory Administration to issue an Essentiality Certificate. What the Regulations do, as discussed above, is lay down that an Essentiality Certificate is the qualifying criterion for making an application for opening a medical college. In that sense, the provision recognizes an Essentiality Certificate issued by the State Government. It is nobody's case that the State Government is conferred with the power or duty to issue such a certificate under any State law. In any case, in view of the fact that the field is occupied by a parliamentary law i.e. IMC Act, 1956, a State law even if already existing would have no efficacy in the field. As a consequence, the executive power of the State under Article 162 cannot be invoked.

29. The Essentiality Certificate, therefore, must be taken to have been issued under the IMC Act read with Regulations and not in exercise of any independent power of the State. Significantly, where no power to issue certificate is shown to have been conferred by the IMC Act or the

Regulations, it would be futile to enquire if a corresponding power to withdraw the same has been conferred on the State. Even assuming that a power to issue such a certificate has been impliedly conferred by the Regulations under the Act, certainly, no power to withdraw the same has been so conferred. Such a power cannot be arrogated relying on Section 21 of the General Clauses Act.

30. A similar question arose in Industrial Infrastructure Development case (supra) where the Commissioner of Income Tax cancelled a registration certificate because it contained an error apparent from the record. This Court held that the certificate was issued as a result of the quasi judicial order and could have been withdrawn only when an express power is vested in the authority to do so. In that case, this Court noted two earlier decisions in Ghaurul Hasan vs. State of Rajasthan12 and Hari Shanker Jain vs. Sonia Gandhi13, where it was held that a certificate of registration of citizenship issued under Section 5(1)(c) of the Citizenship Act, 1955 cannot be cancelled by the authority granting registration by taking recourse to Section 21 of the General Clauses Act.

31. In Government of Andhra Pradesh vs. Y.S. Vivekanand Reddy14, the High Court was called upon to consider whether the consent given by the State Government to the lessee to enter into sub- leases could be withdrawn by invoking Section 21 of General Clauses Act. A full bench of the Andhra Pradesh High Court, per S.S.M. Quadri, J AIR 1967 SC 107 (2001) 8 SCC 233 AIR 1995 AP 1 (as His Lordship then was) held that the power to withdraw the consent could have been exercised only as long as it was capable of being rescinded since this exercise had to be subject to like conditions, as contemplated by Section 21. Therefore, the Court held since the lessee, acting on consent had executed a sub-lease and the sub-lessee had already commenced mining operations, the consent had worked itself out and cannot be withdrawn at that stage as the conditions existing at the time of giving consent have changed.

32. We are of the view that the case before us presents a similar situation where the petitioner college has acted on the Essentiality Certificate and has established a college which has functioned; may be deficiently. The conditions having changed since the grant of the Essentiality Certificate, Section 21 is not available in the absence of any power to withdraw conferred by the IMC Act.

33. In view of the above, we find that Condition No.(XI) is ultra- vires the provisions of the IMC Act and Regulations. In the result, the order dated 01.11.2017, issued by Respondent No. 1- State of Punjab, withdrawing the Essentiality Certificate is quashed and set aside and Condition Nos.(VII) and (XI) are declared illegal.

34. Accordingly, the Writ Petition is allowed.

35. We may not be understood to be laying down that under no circumstances can an Essentiality Certificate be withdrawn. The State Government would be entitled to withdraw such certificate where it is obtained by playing fraud on it or any circumstances where the very substratum on which the Essentiality Certificate was granted disappears or any other reason of like nature.

.....J. [S.A. BOBDE] .....J. [L. NAGESWARA RAO]
NEW DELHI JULY 03, 2018