



Amit Biswas,
Under Secretary,



भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
निर्माण भवन, नई दिल्ली - 110108
Government of India
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi - 110108


D.O.No.U-12012/678/2015-ME.I
Dated the 23rd May, 2016

Dear Sir,
Respected Sir,

Medical Council of India vide its letter dated 15.05.2016 (copy enclosed) had made the recommendation for disapproval of the application of Apollo Hospitals Educational & Research Foundations, Telangana for Establishment of new Medical College at Chittoor, Andhra Pradesh for the academic session 2016-17 due to certain grounds related to hospital etc.

02. The recommendations of MCI is under consideration in the Ministry. It is requested that comments of the State Government on the deficiencies pointed out by MCI are provided urgently and in any case not later than 27.05.2016. While offering your comments, please indicate whether the deficiencies have since been reduced or will be removed in a time bound manner.

Kind regards,

Yours sincerely,

(Amit Biswas)

Encl:- As above.

The Principal Secretary,
Health Medical & Family Welfare Department,
Govt. of Andhra Pradesh,
3rd Floor, L-Block, Room No.210,
AP Secretariat, Hyderabad-500022.

Copy to :- The Director, Apollo Health City Campus, Jubilee Hills, Hyderabad-500096.

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No. MCI-34(41)(E-4)/2015-Med./ 108985

Date: 13/05/16
ITEM NO. 198

✓ The Secretary,
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi - 110011.

Sub.: Establishment of new medical college at Chittoor, Andhra Pradesh by Apollo Hospitals Educational & Research Foundation, Telangana with an annual intake of 150 MBBS students under Dr. NTR University of Health Sciences, Vijayawada u/s 10A of the IMC Act, 1956 for the academic year 2016-2017-regarding.

Sir,

Please refer to your letter NO.U-12012/59/2015-ME.I, dated 12/05/2016(received on 13/05/2016), on the subject noted above.

In this regard, I am directed to inform you that the matter with regard to Establishment of new medical college at Chittoor, Andhra Pradesh by Apollo Hospitals Educational & Research Foundation, Telangana with an annual intake of 150 MBBS students under Dr. NTR University of Health Sciences, Vijayawada u/s 10A of the IMC Act, 1956 for the academic year 2016-2017 was considered by the Executive Committee of the Council at its meeting held on 13/05/2016 and it was decided as under:-

"The Executive Committee of the Council considered the fax letter dated 13th May, 2016 of the Central Government, Ministry of Health & F.W. for reconsideration of the case on the basis of inspection conducted by MCI as well as Ministry's letters No. 12012/577/2015-ME-I(Pt.3 & pt.ii) dated 16.03.2016 and 05.04.2016 and decided to reiterate its earlier decision dated 28.04.2016 which is as under:-

".....The Executive Committee also perused the opinion of Law Officer which reads as under:

"The file of M/S. Apollo Hospitals Educational and Research Foundation for establishment of new Medical College has been referred for my opinion on the issue as to whether the MOU entered into between the Government of Andhra Pradesh and the Apollo Hospitals Educational and Research Foundation is as per the requirement of MCI Regulations.

2. In this regard, it may be noted that the terms and conditions that terms and conditions that has to form part and parcel of the MOU between the Appropriate Government and Person/Agency has been set out in the Amendment to the Establishment of Medical College Regulations, 1999 notified in the official gazette on 14.01.2016 and 02.02.2016.

3. The copy of the MOU regarding utilization of Hospital of the State Government that has been submitted with the Compliance Report furnished by the College and received through Central Government's letter dated 12.04.16 as noted on pre-page note 16 are Annexure 3 (a) and 3 (b). The documents that have been submitted are:

(i) Government of Andhra Pradesh, Abstract - Permission for utilizing the facilities of Government District Hospital, Chittoor on lease basis for establishment of a Unique Integrated Campus 'The Apollo Health and Knowledge City'- Orders - Issued' Health, Medical and Family Welfare (D)

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Department dated 04.01.2016. Paragraph 4 of this Order brings out that the Apollo Hospitals Educational and Research Foundation (AHERF) has sought the permission of the State Government to use the existing Chittoor district Government Hospital as a Teaching Hospital for Clinical Training for a period of 3 years through a Memorandum of Understanding as required by the Medical Council of India. Further, perusal of paragraph 8, shows that the "Govt. after careful examination hereby accord permission for lease of the Government District Hospital, Chittoor to Apollo Hospitals Educational and Research Foundation for upgradation facilities and utilization in response to their unsolicited offer on lease basis for a period of (5) years (one full-fledged batch) from the date of entering into MOU to enable to start Medical College from 2016 academic year, extendable by mutual consent." Further, the recommendations are required to be incorporated in the MOU that is being entered into by the Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad on behalf of the Govt. of AP with AHERF.

- (ii) The second document is the Memorandum of Understanding dated 18.01.16 entered between the Government of AP and AHERF. This documents is analyzed herein below in terms of Establishment of Medical College Regulations, 1999 as under:

S.No.	Position in Regulations	Position as in MOU between State Government of Andhra Pradesh and M/S AHERF	Remarks
1.	MOU between the appropriate Government and the "person" for allowing the utilization of the facilities of a hospital owned and managed by an appropriate Government for establishing a Medical College by a person/agency should be in existence at the time of making application.	The MOU between the Government of Andhra Pradesh and M/S AHERF for the utilization of District Headquarters has been entered into on 18.01.2016. Further, paragraph 1 of the MOU states that the State Government has agreed to allow the utilization of services of the Hospital by M/S AHERF from 01.02.16.	This is not as per the requirement of Regulations.
	That the Hospital owned and managed by the appropriate Government should be minimum 300 bedded hospital with necessary infrastructural facilities capable of being developed into a teaching institution situated on a plot of land having an area not less than prescribed under the Regulations. The medical college shall provide free transportation facilities for students and staff. The said Hospital would be on one piece of	Paragraph 4 of the Preamble provides that "District Headquarters Hospital Chittoor" is a 320 bedded Hospital which is wholly managed and financed by the State Government. Paragraph 1 of the MOU states that the State Government has agreed to allow the utilization of services of the Hospital by M/S AHERF from 01.02.16 including permitting AHERF to develop the existing infrastructure, thereby meeting the requirement of	Resolve of the Parties to develop the Hospital into a teaching Institution appears to be in consonance with the requirement of MCI norms, provided they meet the requirement of MCI Regulations for facilities required by the Hospital at the time of establishment.

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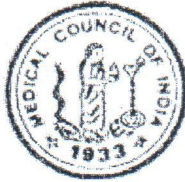


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S.No.	Position in Regulations	Position as in MOU between State Government of Andhra Pradesh and M/S AHERF	Remarks
	land and the building of the College including library and hostel for students/interns, PGs/Residents, nurses may be housed on any of the two pieces of land.	running a teaching Institution. By same clause M/S. AHERF have inter alia undertaken to create and strengthen all ICUs like AMC, CCU, RICU and casualty departments and equip with state of art infrastructure and facilities; strengthen OTs by providing additional equipment and monitoring facilities - the total number of OTs shall be increased to meet the requirement of MCI; strengthen the trauma care services by providing additional facilities for Neurosurgery, Intensive Care, Critical Care and reconstructive surgery; provide and maintain the unit with around hemodialysis 10 machines; strengthen the wards of existing broad specialities like General Medicine, Orthopaedics, ENT, Ophthalmology, and OBG by providing good cots, bedside lockers etc. By paragraph 7 of the MOU M/s AHERF has undertaken to provide separate OTs and Labour Rooms for OBG and strengthen the diagnostic facilities. Paragraph 7 of the MOU provides that Hospital is constructed in 6.3 Acres land and there is vacant area of 9.8 Acres.	Meets the requirement of land for Hospital being above 5 acres, however, the MOU is silent on the aspect of land for the other piece as also the provision of free transportation facilities for students and staff.
	The minimum 300 bedded hospital has to be transferred by the Government to the applicant Trust/Society/company through an appropriate MOU of minimum of 33 years or by way of lease	Paragraph 15 of the MOU provides that MOU will be in force for a period of 05 years from the date on which AHERF starts operating the District Headquarters Hospital, Chittoor, and by consensus/mutual consent it is further extendable.	The Council Regulations provides for the minimum period of 33 years. Hence, hence it is not permissible. The MOU is silent as to the seat sharing

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	upto 99 years, preferably but in any case not less than 33 years. While transferring the Hospital facility, the State Government may safeguard the interest of State particularly in respect of admission of students under Government Quota in the medical College and patient care in affiliated Hospital(s) of the Medical College.	Paragraph 16 provides that the minimum lock in period is 05 years and the MOU cannot be terminated during the lock-in period of 05 years and can only be terminated with 06 months' notice by either parties after the minimum lock in period. Paragraph 11 of the MOU provides that "all services so provided by the hospital should be made available free of cost to the public"	between State and M/S AHERF.
	The hospital must be suitably altered through appropriate modifications into a teaching hospital specially with reference to the breakup of 300 beds into 120 beds for Surgical Specialities and 60 for OBG and also capable of forming clinical units of 30 beds each with required ward size, teaching and training space and other prescribed requirements as per the Governing Regulations before the application is made for starting the new Medical College.	Paragraphs 2 to 8 of the MOU set out the modalities through which the State Government and AHERF have agreed on the modalities for converting the District Headquarters Hospital into a teaching institution, including upgradation of the facilities, so as to conform to the requirements of MCI Regulations. The MOU is entered into on 18.01.2016 and the utilization of the services by AHERF commences from 01.02.16.	This aspect is subject to physical verification by Assessors. It is clear that at the time of making application there is no MOU for the utilization of the District Hospital between the State Government and M/S AHERF.
	The hospital should have all the feasibility for it being periodically upgraded including the augmentation of the number of beds and commensurate teaching compliment as prescribed by the Governing Regulations with respect to the permitted annual intake for the College of 50/100/150/200/250 as the case may be.	Paragraphs 2 to 8 of the MOU set out the modalities through which the State Government and AHERF have agreed on the modalities for converting the District Headquarters Hospital into a teaching institution, including upgradation of the facilities, so as to conform to the requirements of MCI Regulations.	

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	The personnel working in the said hospital, technicians, para clinical staff including nurses and the menial staff, if transferred to the medical college, upon their transfer shall be under the administrative control of the Dean of the Medical College ensuring that there is no "duality" of administrative control of any type.	By paragraph 9 of the MOU the State has constituted a committee consisting with one from Dr. NTRUHS representative, Director of Medical Education, Commissioner of Andhra Pradesh Vaidya Vidhana Parishad, Medical Superintendent, DH, Chittoor and One Representative from AHERF. The Committee will monitor the progress of developmental activities of the hospital and functioning of hospital and eventual conversion of this hospital into a teaching hospital. Suitable remedial action will be initiated by the Committee if there are any deviations regarding time line, maintenance of standards of teaching hospital and delivery of quality services throughout the lease period. The service problem of all government staff shall be dealt with by the committee.	There is no reference to the role of the Dean of the Medical College in the MOU.
	The administrative control so envisaged would include "Academic", "Clinical" and "Financial" aspects as well.		The MOU is silent on this aspect.
	The clinical staff working at the said hospital other than those who conform to the prescribed eligibility for being designated as Assistant Professor, Associate Professor, Professor of the concerned subject, as the case may be prescribed by the Teachers' Eligibility Qualifications Regulations will have to be replaced by full time appointment of the requisite number of duly qualified full time medical teachers, such replacement will not apply		The MOU is silent on this aspect.

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	<i>to non-teaching position like Casualty Medical Officer, Hospital Administrators etc. in accordance with the prescribed requirements under the governing Regulations. In order to ensure that the binding operational dictum that "teaching physician has to be the treating physician" meaning thereby that the "treating" personnel would be the one who would be the "teaching" personnel.</i>		

The above comparative study brings out that the MOU entered between the Govt. of Andhra Pradesh and AHERF is not in accordance with the provisions of Establishment of Medical College Regulations, 1999 that set out the condition for Memorandum of Understanding between the Government and Private entity for utilization of Hospital owned and managed by the Government. "

The Committee also perused the opinion of Law Officer dated 28.04.2016 which reads as under:

"The file of M/S. Apollo Hospitals Educational and Research Foundation for establishment of new Medical College has been referred for my opinion on the issue of availability of Hospital at the time of making application by the Apollo Institute of Medical Sciences & Research. In this regard, it is pertinent to point out that the Essentiality Certificate dated 28.08.2015, inter alia states that the "applicant owns Ac. 40 land and manages a 320 bedded hospital."

2. *The Hospital on the basis of which the applicant is seeking to establish the Medical College is the District Hospital Chittoor. The permission for entering into an MOU to hand over the said Hospital was granted by the Government of Andhra Pradesh on 04.01.2016. Subsequently, on 18.01.2016, the State Government and M/S. AHERF have entered into an MOU. The date of commencement of MOU is stated in the MOU as 01.02.2016. Thus, it is evident that at the time of making application the applicant does not fulfill the qualifying criteria regarding Hospital as required in the Establishment of Medical College Regulations, 1999. Further, while Regulations provide that the MOU should be for a minimum period of 33 years, whereas in this case it is for a period of 05 years only. Moreover, as per Regulations, the Dean of the Medical College is required to have the administrative control over the personnel working in the said Hospital, herein this case a Committee has been constituted by the State to look into the service problems of the employees. There is no mention in the MOU about the administrative control of the Dean.*

3. *It may be recalled that the Hon'ble Supreme Court in its judgment dated 20.08.15 in Royal Medical Trust & Anr. vs. Union of India & Anr. reported in (2015) 10 SCC 19 has in paragraph 27 of the judgment has laid down as under:-*

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27. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations.
(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

4. Further, the Hon'ble Supreme Court in its recent judgment in the case of *Medical Council of India vs. V.N. Public Health & Educational Trust & Anr.* in Civil Appeal No. 3964 of 2016 (arising out of SLP (C) No. 5326 of 2016) dated 18.04.16 has held as under:

14. In this context, we may profitably refer to the decision in *D.Y. Patil Medical College v. Medical Council of India & Anr 2015 (10) SCC 51* wherein the controversy had arisen due to rejection of the application of the institution on the ground that Essentiality Certificate was not filed along with the application form. The Court dwelled upon the principles stated in *Educare Charitable Trust v. Union of India & Anr AIR 2014 SC 902: (2013) 16 SCC 474, Royal Medical Trust (supra)* and various other decisions and, after analysing the scheme of the Act, has held:-

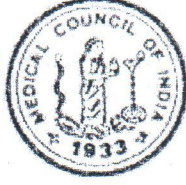
"It is apparent from the aforesaid decision and the regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process."

15. The impugned order passed by the High Court is to be tested and adjudged on the anvil of the aforesaid authorities. The application for grant of approval was filed with the Essentiality Certificate which was a conditional one and, therefore, a defective one. It was not an Essentiality Certificate in law. In such a situation, the High Court could not have directed for consideration of the application for the purpose of the inspection. Such a direction, we are disposed to think, runs counter to the law laid down in *Educare Charitable Trust (supra)* and *Royal Medical Trust (supra)*. We may further proceed to state that on the date of the application, the Essentiality Certificate was not in order. The Schedule prescribed by the MCI, which had been approved by this Court, is binding on all concerned. MCI cannot transgress it. The High Court could not have gone beyond the same and issued any direction for conducting an inspection for the academic year 2016-17. Therefore, the directions issued by the learned single Judge and the affirmation thereof by the Division Bench are wholly unsustainable.

16. Consequently, the appeal is allowed and the judgments and orders passed by the High Court are set aside. It will be open to the Trust to submit a fresh application for the next academic year in consonance with the provisions of the Regulations of the MCI and as per the time Schedule; and in that event, it will be considered appropriately. In the facts and circumstances of the case, there shall be no order as to costs.

5. The above factual matrix clearly brings out that at the time of making application there was no MOU in existence between the Government of Andhra Pradesh and Apollo Hospitals Educational and Research Foundation for establishment

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of new Medical College for establishment of new Medical College at Chittoor. The judgment of the Hon'ble Supreme Court are loud and clear to the effect that an applicant is required at the time of making application to fulfil the qualifying criteria. As per MCI Regulations Hospital is a necessary requirement at the time of making application and an application that does not meet the necessary requirement of Hospital is to be rejected. Therefore, it would be appropriate in my considered view to recommend to the Central Government to disapprove the application of M/s Apollo Hospitals Educational and Research Foundation for establishment of new Medical College at Chittoor amongst other grounds on the ground that it has failed to meet the qualifying criteria regarding owning and managing Hospital at the time of making application. Further, the MOU on which the applicant has placed reliance is also not in accordance with the norms laid down in Regulations."

In view of above, the Executive Committee of the Council decided to reiterate its earlier decision taken at its meeting held on 30.01.2016 recommending to the Central Government for disapproval of the scheme and to return the application for establishment of a new medical college at Chittoor, Andhra Pradesh by Apollo Hospitals Educational & Research Foundation, Telangana under Dr. NTR University of Health Sciences, Vijayawada u/s 10A of the IMC Act, 1956 for the academic year 2016-2017 as there is no provision u/s 10A of the Indian Medical Council Act, 1956 or the regulations framed therein to keep the application pending in the Council office for the next academic year."

In view of above, the application for establishment of a new medical college at Chittoor, Andhra Pradesh by Apollo Hospitals Educational & Research Foundation, Telangana under Dr. NTR University of Health Sciences, Vijayawada u/s 10A of the IMC Act, 1956 for the academic year 2016-17 (in original) is being returned herewith to the Central Government, Ministry of Health & Family Welfare with the recommendation to disapprove it, as there is no provision to keep the application pending in the Council Office for the next academic year.

Yours faithfully,

S. Savitha

(S. Savitha)

Asstt. Secretary

Encls: As above.