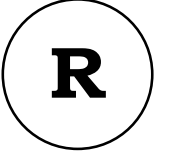


Reserved on : 18.03.2025
Pronounced on : 29.04.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13685 OF 2024 (GM-RES)

BETWEEN:

SMT. SAVINAYA
W/O SHASHIDHAR
AGED ABOUT 33 YEARS
R/AT MERALA HOUSE
KEYYUR POST AND VILLAGE
PUTTUR TALUK
DAKSHINA KANNADA DISTRICT - 574 201.

... PETITIONER

(BY SRI R.BHADRINATH, ADVOCATE)

AND:

- 1 . MRS. SHEELA G.BHAT
GANDHARVA HOUSE
KAINADKA SULLIA
DAKSHINA KANNADA - 574 239.
- 2 . THE DEPUTY GENERAL MANAGER
PHARMACEUTICALS AND MEDICAL DEVICES
BUREAU OF INDIA (PMBI)
(SET UP UNDER THE DEPARTMENT OF

PHARMACEUTICALS, GOVERNMENT OF INDIA)
8TH FLOOR, VIDEOCON TOWER
BLOCK-E3, JHANDEWALAN EXTENSION
NEW DELHI - 110 055.

- 3 . ASSISTANT MANAGER
HEAD QUARTER HUBBALLI
KARNATAKA, PRADHAN MANTRI BHARTIYA
JANAUSHADHI PARIYOJANA (PMBJP)
PHARMACEUTICALS AND MEDICAL DEVICES
BUREAU OF INDIA (PMBI)
(SET UP UNDER THE DEPARTMENT OF
PHARMACEUTICALS, GOVERNMENT OF INDIA)
8TH FLOOR, VIDEOCON TOWER, BLOCK-E3
JHANDEWALAN EXTENSION
NEW DELHI - 110 055
REPRESENTED BY ASSISTANT MANAGER
VEMU NAGARAJU.

... RESPONDENTS

(BY SRI M.SUDHAKAR PAI, ADVOCATE FOR R1;
SRI H.SHANTHI BHUSHAN, DSGI FOR R2 AND R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED
ORDER/LETTER DTD 02.04.2024 ISSUED BY THE R3 AS PER
ANNEXURE-A AND FURTHER DIRECT THE RESPONDENTS TO
CANCEL THE FINAL APPROVAL AND STORE CODE GRANTED IN
FAVOR OF THE R1 AS PER ANNEX-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 18.03.2025, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question a communication dated 02-04-2024 through which the claim of the petitioner to cancel the final approval granted in favour of the 1st respondent for establishment and business of Janaushadhi Kendra under the Pradhan Mantri Bharatiya Janaushadi Kendra (hereinafter referred to as 'the Kendra' for short), is declined.

2. Heard Sri R. Bhadrinath, learned counsel appearing for the petitioner, Sri M.Sudhakar Pai, learned counsel appearing for respondent No.1 and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondents 2 and 3.

3. Facts adumbrated are as follows:-

The Government of India, recognizing the harsh economic reality that renders essential medicines inaccessible to large segment of the population due to prohibitive costs, conceived the establishment of the Kendra in terms of deliberations of the Committee constituted for the said purpose in the year 2008.

Though it was conceived in the year 2008, it remained only on paper. It has now recently come to life by strengthening establishment of Kendras in all the rural areas. The Kendras were to become beacons of affordable quality generic medicine across the nation. Therefore, the proposal emerges that at least one Kendra should be established in 734 Districts in the Country. It is then the Pradhan Mantri Bhartiya JanaushadhiPariyojana is ushered in. After the aforesaid Pariyojana has been brought into effect, applications are called for setting up of Kendras from the hands of interested and eligible persons. The subject matter of the present petition concerns establishment of a Kendra in KumbraVillage, PutturTalulk, Dakshina Kannada District. Pursuant to the notification issued for the purpose of establishment of Kendra, both the petitioner and the 1st respondent apply for grant of licence/allotment in their respective favour. The petitioner is said to have made an application on 20-11-2023 for opening of the Kendra under the category of women entrepreneur at the aforesaid location. For the purpose of establishment of a Kendra, it appears, that the petitioner had also identified a place of business on the ground floor

of particular building where the Primary Agricultural Bank Private Limited was situated.

4. Pursuant to the filing of the application, it appears, that in-principle approval was granted in favour of the petitioner and was asked to furnish all the necessary documents. The petitioner is said to have furnished all the required documents and placed a request for generating a store-code by granting final approval. The store-code and approval did not come about. The petitioner then learns that the 1st respondent who had also filed an application along with the petitioner was granted approval and store-code and, therefore, the petitioner now calls in question the action of granting approval in favour of the 2nd respondent, second in line and according to the petitioner it was in violation of the policy of establishment of a Kendra. The petitioner then is said to have submitted several representations to cancel the store-code and approval granted to the 1st respondent. Since representations go unheeded, the petitioner is at the doors of this Court seeking the following prayers:

- (a) Issue a writ of certiorari, quashing the impugned order/letter dated 2-04-2024 issued by the respondent No.3 as per Annexure-A and further direct the respondents to cancel the final approval and store code granted in favour of the respondent No.1 as per Annexure-A.
- (b) Issue a writ of mandamus directing the respondents to grant final approval and issue store code pursuant to the principle approval order dated 11-12-2023 issued by the respondent No.2 as per Annexure-D.
- (c) Declare that approval order dated 20-12-2023 granted in favour of respondent No.1 by respondent No.2 as per Annexure-E is null and void."

5. The learned counsel for the petitioner elaborating aforesaid prayers would submit by taking this Court through the policy of establishment of Kendra, that there cannot be two Kendras within 1.5 kms. The learned counsel would submit that admittedly, the distance between the approval granted to the petitioner for the purpose of establishment of the Kendra and the subsequent approval granted to the Kendra of the 1st respondent are at a distance of 600 meters. The policy mandates one kilometer in certain circumstances and 1.5 kilometer in certain other circumstance. His submission is that the store-code and approval granted to the 1st respondent should stand cancelled as the application of the petitioner was the first to come in.

6. Per contra, the learned Deputy Solicitor General of India representing respondents 2 and 3 would submit that the Kendra is wrongly presented by the petitioner. It is Pradhan Mantri Bhartiya Janaushadhi Pariyojana ('the Scheme' for short) and not as it is described. It is his submission that the said Scheme is launched with an objective of making quality generic medicines available at affordable prices to all. The Kendras are set up after due authorization from the Central Implementing Agency strictly in terms of the Scheme. The learned Deputy Solicitor General of India would submit that the 2nd respondent received a communication on 16-11-2023 from a Member of the Parliament in favour of the 1st respondent for opening up of a Kendra and another letter on 17-11-2023 in favour of the petitioner. Both the applications were considered and the application of respondent No.1 was received on 16-11-2023 through offline mode and subsequently, through on-line mode on 01-12-2023. The petitioner has made the application on 05-12-2023 in the offline mode. The assessment was done and the Kendra is now approved to be granted to the 1st respondent. He would contend that no illegality can be projected as the object is

to ensure that Kendras are easily accessible to general public and to keep fair competition among two Janaushadhi Kendras distance policy of minimum of 1 km. between two out lets is envisaged. He would, therefore, seek dismissal of the petition.

7. The learned counsel appearing for the 1st respondent would toe the lines of the learned Deputy Solicitor General of India in contending that all the necessities are noticed including the distance policy. The application of the 1st respondent was earlier in time and that it had been processed and approval is granted. It may be a sheer error in granting in-principle approval to the petitioner. But, the store-code and the final approval is granted only to the 1st respondent. He would seek dismissal of the petition on the score that no fault can be found with the establishment of the Kendra.

8. I have given my anxious consideration to the submissions made by the respective learned counsel for the respective parties and have perused the material on record.

The Scheme:

9. Before embarking upon the issue in the *lis*, I deem it appropriate to notice the Scheme and its object. It is in public domain, that the Kendras became necessary to be established to ensure availability of quality medicine at low prices, where medicines could be sold at 50% to 90% cheaper rates, compared to market rates. The introduction found in the Scheme, for establishment of Kendras, is as follows:

"INTRODUCTION:

India is one of the leading exporters of generic medicines to the world. The branded generic medicines are significantly expensive than their un-branded generic equivalents, though they are identical in their therapeutic value.

The Department of Pharmaceuticals under Ministry of Chemicals & Fertilizers, Government of India has been taking several regulatory and fiscal measures from time to time towards realizing this objective.

Most of the drugs dispensed in India are branded generics, i.e., generic drugs sold with brand names. The need is to focus on unbranded medicines to save expenditure on medicines for all citizens".

(Emphasis supplied)

and the salient features of the scheme are as follows:

“Salient Features:

The Scheme is operated by Government agencies as well as by private entrepreneurs:

1. Prices of the Jan Aushadhi medicines are 50% - 80% less than that of branded medicine's prices available in the open market.
2. Medicines are procured only from World Health Organization – Good Manufacturing Practices (WHO-GMP) certified manufacturers for ensuring the quality of the products.
3. Each batch of drug is tested at laboratories accredited by 'National Accreditation Board for Testing and Calibrated Laboratories' (NABL) for ensuring best quality.
4. The incentive up to ₹20,000/- per month given @ 20% of monthly purchases made and subject to the stocking mandate.
5. One-time incentives of ₹2.00 lakh is provided to the PMBJP Kendras opened in North-Eastern States, Himalayan areas, Island territories and the backward areas mentioned as aspirational districts by NITI Aayog or opened by women Entrepreneur, Ex-Serviceman Divyang, SC & ST.”

The afore-quoted is the object behind introduction of the Scheme, for establishment of Kendras, all over the Nation.

10. The essence of the subject dispute is not just about license and locations. It touches upon the very noble purpose of

introduction of the Scheme. As observed hereinabove, the Scheme envisioned to redress the imbalance to access medicines by providing quality generic medicines at fair prices. It was proposed that at least one Kendra should be opened in each of the 734 Districts of the Country and later extended to Sub-Divisional Levels as well as Major towns and village centers. The eligibility criteria is also found in the Scheme.

11. Certain salient features of the Scheme which are germane to be noticed read as follows:

" "

II. Pharmaceuticals & Medical Devices Bureau of India (PMBI)

A Pharmaceuticals & Medical Devices Bureau of India (PMBI) formerly known as Bureau of Pharma PSUs of India (BPPI), implementation agency for the Pradhan Mantri Bhartiya Pariyojana (PMBJP) was established in December 2008 under the Department of Pharmaceuticals, Government of India, with the support of all the CPSUs and has been registered as an independent society under the Societies Registration Act, 1860, as a separate independent legal entity in April, 2010. PMBI follows the provisions of the GFR, 2005 as amended from time to time, the CVC guidelines and instructions from the Department of Pharmaceuticals. The defined roles of PMBI are as follows:

- Make quality generic medicines available at affordable prices for all;
- marketing of generic drugs through Pradhan Mantri Bhartiya Janaushadhi Kendra (PMBJK);
- Procurement of medicines from Central pharma PSUs and Private Sectors;
- Monitoring the proper functioning of PMBJK.

III. Eligibility Criteria to open Pradhan Mantri Bhartiya Janaushadhi Kendra

Individual applicants must be having D. Pharma/ B. Pharma Degrees, or he/she have to employ D.Pharma/B.Pharma degree holders and produce proof of the same at the time of submitting applications or at the time of final approval. Any organization, NGO applying for a **PMBJK** will have to employ **B.Pharma/D.Pharma degree holders and produce proof of the same at the time of submitting applications** or at the time of final approval. In Government Hospital premises, including medical colleges, the preferred agencies would be reputed NGOs/ Charitable organizations but individuals would also be eligible.

....

V.Requirements for opening PMBJK

- a. Own space or hired space (Minimum 120 sq. ft.) duly supported by proper Lease Agreement or Space Allotment Letter. The Applicant will arrange the space for running the Pradhan Mantri Bhartiya Janaushadhi Kendra & PMBI will have no role for arranging space.
- b. Proof of securing a pharmacist with name, Registration with the State Council etc. (or it can be submitted at the time of final approval of PMBJK).
- c. If applicant is under the category of Woman entrepreneurs, Divyang, SC, ST & any entrepreneurs of aspirational districts (backward district) as notified by the Niti Aayog, in Himalayan, Island territories and

North-Eastern States, the applicant has to submit suitable certificate/proof from respective authorities along with undertaking at the time of application. The Applicant must mention the category for getting the suitable benefit and category mentioned in the application form. Once the category is selected by the applicant, later on applicant will not be able to change it in future due to any reason.

d. Non-refundable application fees of ₹5,000/- is to be deposited along with application form. Application fee is not applicable in case of applicant belongs to the category of Women Entrepreneurs, Divyang, SC, ST & any entrepreneurs of aspirational districts (backward district) as notified by the NITI Aayog, in Himalayan, Island territories and North-Eastern States. For exemption of fee the applicant has to submit the proof of their category.

e. The following distance policy shall be observed, while approving the new PMBJK. Hence, applicant is required to follow the mentioned distance policy while applying for the new PMBJK:

Criteria	Population of District	Distance Policy
A	Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Ahmedabad and districts having population equal to or more than ten (10) lacs.	Distance of 1.00 km shall be observed between two Kendras while approving new Kendra.
B	District having population less than 10 lacs.	Distance of 1.50 km shall be observed between two Kendras while approving new Kendra.

Note: Population census shall be verified with the data of Registrar General and Census Commissioner of India under the ministry of Home Affairs, Government of India

VI. Important Operating Terms and Conditions

Important operating terms and conditions for operating PMBJK are given below:

- a) Applicants will enter into agreement before beginning operations of "Pradhan Mantri Bhartiya Janaushadhi Kendra". All operations of Pradhan Mantri Bhartiya Janaushadhi Kendra will be conducted as per agreement terms and conditions.
- b) It shall be the responsibility of the applicant to obtain drug license in the name of "**Pradhan Mantri Bhartiya Janaushadhi Kendra**" and other permissions to run a drug store. Compliance to all statutory requirements for storage of drugs shall be ensured by the applicant.
- c) Applicant will use the premises solely for the purpose for which it has been allotted and for no other purpose and shall not part with the premises, sub-let the premises to anyone directly or indirectly.
- d) All billings should be done using software provided by PMBI. No medicine can be sold in PMBJK without using the software provided by PMBI.
- e) PMBJK operators will be allowed to sell allied medical products, commonly sold in chemist shops but they are not allowed to sell any medicines other than products of PMBI.
- f) Supply will be made against the advance payment for dispatch of goods.

Detailed terms and conditions are given in draft agreement and may be referred by applicant."

(Emphasis supplied)

In terms of the afore-quoted Scheme, applications were called under the category of women entrepreneur from eligible women to apply and establish the Kendras under the Scheme. Both the petitioner and the 1st respondent are said to have applied. The petitioner's application is said to have been processed and in-principle approval is granted. It is on 11-12-2023. It is only then the documents are sought from the hands of the petitioner. The communication dated 11-12-2023 reads as follows:

"No.PMBI/06/IND47/KAR2777/2023-24 PMBJK

Date: 11-12-2023

To
Ms. Savinaya,
Contact No.8618465504
Email ID-savinaya.23@Yahoo.com

Subject: Opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" (Not Applicable for Government Location/Government Premises).

Reference: Application for opening of "Pradhan Mantri Bhartiya Janaushadhi Kendra" at 1-450, Primary Agricultural Bank Private Limited, Kumbra, PutturOlamogaru, Ward-1, Dakshina Kannada, Karnataka-574 210.

Dear Sir/Madam,

This has reference to your application for opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" at 1-450, Primary Agricultural Bank Private Limited, Kumbra, PutturOlamogaru, Ward-1, Dakshina Kannada, Karnataka-574 210.

We are processing your application for opening of Pradhan Mantri Bhartiya Janaushadhi Kendra in the premises **as mentioned in the application and giving you an in-principle approval for the same. However, final approval will be accorded after completion of all the formalities. As per the guidelines for opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" the below mentioned documents are required to be submitted for further processing of your application"**

(Emphasis supplied)

The communication indicates that an in-principle approval is granted. However, the final approval will be accorded after completion of all the formalities and therefore, several documents are sought. The petitioner places heavy reliance upon the communication dated 11-12-2023.

12. As observed hereinabove, the 1st respondent also had preferred an application. While the communication of the petitioner quoted hereinabove is dated 11-12-2023, another communication

of the same kind has emerged in favour of the 1st respondent. The communication dated 20-12-2023 reads as follows:

"No.PMBI/06/KA/CAT1/000013276/2023-24 PMBJK

Date: 20-12-2023

"To,

Mr./Ms. Sheela G Bhat
Contact No-9449720040
Email ID- pmbjkkumbra85@gmail.com

Subject: Opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" (Not Applicable for Government Location/Government Premises)

Reference: Application for opening of "Pradhan Mantri Bhartiya Janaushadhi Kendra" at Door No 1-543 Suvarna Complex Kumbra Post, Olamogru Village Kumbra, Puttur Taluk Dakshina Kannada, Karnataka 574210 Dakshina Kannada, South East, Karnataka 574210.

Dear Sir/Madam

This has reference to your application for opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" at Door No 1-543 Suvarna Complex Kumbra Post, Olamogru Village Kumbra, Puttur Taluk Dakshina Kannada, Karnataka 574210 Dakshina Kannada, South East, Karnataka 574210.

We are processing your application for opening of Pradhan Mantri Bhartiya Janaushadhi Kendra in the premises as mentioned in the application and giving you an in-principal approval for the same. However, final approval will be accorded after completion of all the formalities. As per the guidelines for opening of new "Pradhan Mantri Bhartiya Janaushadhi Kendra" the below-mentioned documents are required to be submitted for further processing of your application: -

Sl. No.	Documents	Self-certified copies of the below mentioned documents	Remarks	
			Whether documents received by us	Documents awaited
1	Aadhaar Card	Copy of Aadhaar Card	Yes	No
2	PAN Card	Copy of PAN Card	Yes	No
3	Income Tax Return	Copy of ITR (First last year)	No	Yes
4	Income Tax Return	Copy of ITR (Second last year)	No	Yes
5	Bank Statement	Copy of Bank Statement (Recent Six month)	No	Yes
6	GST Declaration form	Undertaking by the applicant in the given Performa	No	yes
7	Undertaking for distance policy	Undertaking of no nearby PMBJP Kendra in the given Performa	No	Yes
8	SC or ST or Divyang applicants (if applicable)	Copy of caste certificate or Divyang certificate -issued by respective authority.	No	---
9	Entrepreneur- Woman / Northeast/ Himalayan state/	Undertaking by the applicant in the given Performa.	No	Yes

	Aspirational district (if applicable)			
10	Drug license	Copy of Drug license in the name of Pradhan Mantri Bhartiya Janaushadhi Kendra. (Please apply for Drug License and submit on receipt)	No	Please submit
11	Agreement duly signed on stamp paper of Rs.100/-	Format of the agreement is enclosed for execution of agreement. (Please submit in original after completion of all formalities)	No	Please submit original

Please mention your application no. **"PMBI/06/KA/CAT1/000013276"** in all future communications.

In view of the above, you are requested to kindly furnish the above requirements at the earliest, to enable us to take further action in this regard. This letter is released so as to enable you to apply for Drug License under the name Pradhan Mantri Bhartiya Janaushadhi Kendra."

(Emphasis supplied)

Both the applications are said to have been assessed/processed and a store-code and final approval is granted in favour of the 1st

respondent. This is objected to by the petitioner in terms of the following objections:

"17-01-2024

OBJECTION LETTER FOR OPENING ANOTHER JANAUSHADI KENDRA AT SAME PLACE

This is to inform you that I have received initial approval for opening of Janaushadi Kendra at KumbraPuttur (Initial Approval No.PMBI/06/IND47/KAR2777/ 2023-24 PMBJK Dated 11-12-2023). Based on this initial approval, I have applied for Drug license and I got the same (Form No.20 – KA-MN2-253882 and Form No.21 – KA MN2-253883 dated 1.1.2024). Along with this drug license I have sent the other relevant documents to Janaushadi Kendra Head Office, Delhi through Indian Speed Post (EK422406732IN DATED 2-01-2024 @16.45). Also at the same time, I have sent the above documents scanned copy to Email id [marketing25@kamaisjadjo Gov.in](mailto:marketing25@kamaisjadjo.Gov.in) Dated Jan 2, 2024, 5.42 PM. So I confirmed that my file is under process at JanaushadiHealth Officer for generating STORE CODE. **My shop has already been fully prepared and I have set up the required computer, fridge, inverter and shelves in my shop, for this I have spent about more than two lakhs.**

In the meantime, I have recently received information that after I got my initial approval after one week, one more initial approval has been given (Smt. Sheela G Bhat) to open another Janaushadi Kendra within 500 meters in front of our store, which is against the JanaushadiDistance Policy and I strongly oppose this.

For your kind information this person already has a Janaushadi Kendra (PMBJK06741) AT Nagara and 2 private medical shop namely SWASTHIK Medical at Nagara next to Janaushadi Kendra and one more in Gandharva Medical at Puttur. Court Road.

Currently I have no other source of income for my life and I do not hold any Janaushadi Kendra at anywhere. Please I hereby kindly request to officers please do not give permission

to the above person who tries to put JanaushadiKendrain front of our shop by breaking the JanaushadiDistance Policy.

Thank you,

Yours,
Savinaya
W/o Shashidar M
Merla House, Keyyur Post & Village,
Puttur TQ-574 210 Mob: 8618465504.”

(Emphasis supplied)

The petitioner narrates that she had received an initial approval for opening of the Kendra subject to other formalities. In the meantime, she has come to know that initial approval is given to the 1st respondent who had filed the application after the application filed by the petitioner and the Kendra is within 500 meters in front of the store that the petitioner has chosen. It is also brought to the notice that the 1st respondent is already holding a Janaushadi Kendra and there are two private medical shops next to the Janaushadi Kendra. With all this, the petitioner alleges violation of the policy. Another representation is submitted by the petitioner against the allotment of Kendra in favour of the 1st respondent notwithstanding in-principle approval in her favour. This representation does not get any heed. Therefore, the petitioner is

before the Court. The learned Deputy Solicitor General of India has steered clear the controversy. The counter affidavit of respondents 2 and 3 insofar as receipt of applications and their consideration are as follows:

"9. That PMBI received recommendation letter on 16-11-2023 from Sh.Nalin Kumar Kateel (Member of Parliament, Dakshin Kannada, Karnataka) dated 19.10.2023 in favour of respondent No.1 for opening of Janaushadi Kendra and another letter dated 17-11-2023 in favour of petitioner for opening of Janaushadi Kendra received to PMBI/Respondent No.2 on 1-12-2023.

10. That the application to open Janaushadi Kendra by respondent No.1 was received to PMBI/respondent No.2 on 16.11.2023 through offline mode and subsequently through online mode on 1-12-2023. Application to open Janaushadi Kendra by petitioner was made in offline mode and received to PMBI/respondent No.2 on 5-12-2023. PMBI changed its procedure to apply for new Janaushadi Kendra from offline to online mode w.e.f.1-12-2023.

11. That since the mode of filing application by both the parties i.e., petitioner and respondent No.1 was offline and online respectively, the application of respondent No.1 processed faster than petitioner. Level 2 Officer (Marketing Officer) of respondent No.2 approved the application of respondent No.1 on 6-12-2023, on the other hand the application of petitioner being filed via offline mode required approval from competent authority which took time.

12. That Level 2 Officer (Marketing Officer) of respondent No.2 verified that there is no Janaushadi Kendra within the distance of 8 k.m. from store of respondent No.1 on 8-12-2023 and hence approved for issuance of initial approval to respondent No.1.

13. That the application to open Janaushadi Kendra in Karnataka (along with other States) was earlier closed however considering the recommendations of the Hon'ble MPs application(s) were considered under special category. Later vide circular dated 4-12-2023 issued by competent authority, all districts of country were opened to consider application(s) via online mode to open Janaushadi Kendra.

14. That all the applicants who applied for Janaushadi Kendra were advised to apply afresh through online mode. Respondent No.1 acting on the advice, applied online for Janaushadi Kendra and accordingly approved on first come first basis."

The affidavit so filed by respondents 2 and 3 is indicative of the fact that the application of 1st respondent was received on 1.12.2023 while that of the petitioner was received on 5.12.2023. The applications were considered on first come first basis. Since the 1st respondent's application was the first and had met all the requirements, the application is considered and store-code and licence for establishment of Kendra is granted in favour of the 1st respondent. Pursuant to the grant of licence, an agreement is also entered into between respondents 2 and 3 and the 1st respondent. Certain clauses of the agreement that are necessary to be noticed read as follows:

"1. SHOP SITE SELECTION & DESIGN:

THE APPLICANT will adhere to PMBI's procedures and requirements for site selection and design of the SHOP, as stated hereunder:

1.1 The site location for opening the PMBJP KENDRA should be either in the hospital premises or near to hospital. If the location does not happen to be a hospital or near to hospital, then the same should be located at a place where high footfall happens and is easily accessible to people along with good site visibility.

1.2 The site for **Pradhan Mantri Bhartiya Janaushadhi Kendra** should either be owned or taken on lease in the name of Applicant. In case of lease, the same should remain effective and under the possession of Applicant for at least 03 complete years from the effective date of opening.

1.3 The minimum area required for opening **Pradhan Mantri Bhartiya Janaushadhi Kendra** should be 120 Sq. Ft.

1.4 **Requirements for opening PMBJK**

a. The applicant is agreed to Own space or hire space (Minimum 120sq.ft.) duly supported by proper lease agreement or space allotment letter. Applicant will arrange the space for running the Pradhan Mantri Bhartiya Jan Aushadhi Kendra & PMBI will have no role for arranging space.

b. The applicant is agreed to provide Proof of securing a pharmacist with name, Registration with the State Council etc.

c. The applicant has agreed to submit suitable certificate/proof from respective authorities along with undertaking in case of the applicant has applied under the category of Women entrepreneurs, Divyang, SC, ST & any entrepreneurs of aspirational districts (backward district) as notified by the Niti Aayog, in Himalayan, Island territories and North-Eastern states. In the application form applicant must mention the category for getting the suitable benefit. The applicant is agreed that once the category is selected by

the applicant in the application form, later on applicant will not be able to change it in future due to any reason.

d. The applicant is agreed to adhere with the following distance policy and in case applicant is found to be not following the distance policy the approval of opening PMBJK can be cancelled at any stage:

Criteria	Population of District	Distance Policy
A	Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Ahmedabad and districts having population equal to or more than ten (10) lacs.	Distance of 1.00 km shall be observed between two Kendras while approving new Kendra.
B	District having population less than 10 lacs.	Distance of 1.50 km shall be observed between two Kendras while approving new Kendra.

Note: Population census shall be verified with the data of Registrar General and Census Commissioner of India under the Ministry of Home Affairs, Government of India.”

(Emphasis supplied)

The shop site selection and design as done by the 1st respondent is approved by respondents 2 and 3. What is to be noticed is that the petitioner is not granted store-code and final approval. The final

approval is only granted in favour of the 1st respondent. Since there was no approval in law finally granted, or a store-code granted to the petitioner, the petitioner cannot project that the distance between two Kendras is less than one kilometer. The policy mandates that distance of one kilometer should be observed between two Kendras while approving a new Kendra where the population of a District is equal or more than 10 lakhs. For a place less than 10 lakhs population the distance is 1.5 kilometer. The learned Deputy Solicitor General of India in his affidavit has indicated that the distance is also reduced to one kilometer now. Be that as it may, the petitioner who did not get the approval finally, cannot contend her rights were crystalized by the approval being taken to its logical conclusion. It was only an in-principle approval subject to final approval. This would not clothe any right in favour of the petitioner to contend that the Kendra that is now approved in favour of the 1st respondent is at a distance of less than one kilometer. It would have been an altogether different circumstance if the petitioner's Kendra was already in existence and another Kendra in 500 meters or less than one kilometer has emerged. This is not the case of the petitioner even.

13. Therefore, the petition which is structured on the edifice of an inchoate right is structured on quicksand as it does not bear any legal foundation. No fault can be found with the approval granted to the 1st respondent as the defence put up by respondents 2 and 3, as quoted herein above, is acceptable.

14. What is projected by the petitioner is purported loss of business by granting another Kendra within a short distance, while it is not the case, as the facts bare consideration hereinabove. **But, it would not be for this court to interfere merely because a business prospect is perceived to be threatened rather, the Court must preserve the spirit of a welfare-oriented scheme designed for the many, not the few.** There is no arbitrariness that is demonstrable or palpable in the case at hand. The geographical area that is contended to be overlapping, has not overlapped, as the application of the petitioner remained an application. Therefore, in conclusion, I find the petition is devoid of merit. No illegality, procedural infirmity or arbitrariness is

discernable from the grant of approval to the 1st respondent, to iterate **public interest would be ill-served if this Court were to interdict a lawful and beneficial initiative on such slender grounds.**

15. For the aforesaid reasons, finding no merit in the petition, **the petition stands rejected.**

As a consequence, I.A.Nos.1/2024 and 1/2025 are disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

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CT:SS