

Court No. - 38

Case :- WRIT - C No. - 13887 of 2020

Petitioner :- R.C.C. College Of Pharmacy And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C.,Rohit Pandey,Vaibhav Tripathi

AND

Case :- WRIT - C No. - 13890 of 2020

Petitioner :- L.P.M. College Of Pharmacy And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Grijesh Tiwari

Counsel for Respondent :- C.S.C.,Rohit Pandey,Vaibhav Tripathi

Hon'ble Pankaj Bhatia,J.

Heard Shri Girijesh Tiwari, Advocate for the petitioners and Shri Rohit Pandey, Advocate for Respondent No. 3.

The above writ petitions challenge the action of the affiliating university, Dr. A.P.J. Abdul Kalam Technical University, Lucknow (Respondent 3).

The petitioner, L.P.M College of Pharmacy in writ petition No. 13890 of 2020, runs courses of B. Pharma and D. Pharma and has obtained due recognition from the Pharmacy Council of India and has also obtained the necessary affiliation from Respondent 3.

The All India Council for Technical Education (AICTE) had granted its approval to the petitioners and had allowed an annual intake of 60 seats for the academic year 2019 to 2020. Thereafter the aforesaid application was scrutinised and verified by the PCI which thereafter granted recognition to the Petitioners institution for conducting the aforementioned courses for the academic year 2019 to 2020 with an intake of 60 seats. In pursuance of the recognition granted by the PCI, respondent 3 also granted its affiliation to the petitioners for conducting the B. Pharma course with an intake of 60 seats for the academic year 2019-2020.

For the academic year 2020-21 the PCI again

granted recognition to the petitioners and allowed the petitioner institution to take admission of 60 students in the course. However, the respondent by an order dated 24.08.2020 has reduced the permitted intake of students in the B. Pharma course for the academic year 2020-21 to 45 seats from the earlier 60 seats.

The petitioner RCC College of pharmacy Basti in writ petition No. 13887 of 2020, had similarly granted approval by the AICTE for the intake of 60 students for the academic year 2019-2020. The same had thereafter been scrutinised and verified by the PCI who also accorded approval to the Petitioners institution for conducting the aforementioned courses with an intake of 60 seats for the academic year 2019 to 2020. In pursuance of the recognition granted by the PCI, examining/affiliating body also granted its affiliation to the petitioners for conducting the B. Pharma course with an intake of 60 seats.

Thereafter for the academic year 2020-21 the PCI granted approval to the petitioners and allowed the Petitioners institution to an intake of 100 seats for the B. Pharma course. The petitioners approached the affiliating University for granting affiliation to the petitioner for running the course with an intake 100 for the academic year 2020-21. However, instead of increasing the same, the respondent vide order dated 24.08.2020 decreased the permitted intake to only 51 seats.

The petitioners have thus challenged orders dated 24.08.2020 passed by the Respondent 3 whereby the respondent has decreased the permitted intake of students in the petitioner colleges for the academic session 2020-21 from 60 seats to 45 seats and from 100 seats to 51 seats respectively.

Assailing the orders passed by the respondent no. 3, the counsel for the petitioner argues firstly that the PCI is the apex body in regard to the grant of approval of intake of seats with respect to admission in pharmacy and once the intake of seats has been approved by this body, the respondent No. 3 had no jurisdiction or power to

reduce the seats in the institution of the petitioners.

The second contention of the Counsel is that due to the passing of the impugned order for no valid reason the petitioners have been deprived in regard to the grant of admission against 15 seats and 49 seats duly approved by the competent authority, namely, the PCI.

The last contention of the counsel is that the orders dated 24.08.2020 violate principles of natural justice as the same has been passed without affording any opportunity of hearing the Petitioners institution and without providing any reasons for decreasing the permitted intake.

Per contra, the counsel for the respondents Shri Rohit Pandey relies on Regulation 6.20 of the Gautam Buddh Technical University Act, 2010 and submits that the Executive Council had the jurisdiction to decrease the permitted seat intake of the following year as a penalty for errors committed by the college in any academic year. Regulation 6.20 reads as under,

6.20. The Executive Council may decrease the next year intake of the course(s) of the affiliated college upto a number which it thinks as a penalty for errors committed by the college in any academic year or even the college may be fined monetarily.

Heard counsel for both the parties.

The moot point, which arises for consideration in this petition, is whether the Respondent University was competent to reduce the permitted intake of the petitioner colleges to 51 seats and 45 seats respectively for the academic year 2020-21 when the PCI had granted approval to the petitioners for the intake 100 seats and 60 seats respectively.

The case at hand is squarely covered by the facts of ***Naraina Vidyapeeth Group Of Institutions Faculty Of Pharmacy v. State Of U.P. (WRIT - C No. - 26367 of 2018)*** wherein the learned single judge, while passing the interim order applied the observations of the Supreme Court in ***Parshvanath Charitable Trust v. All India***

Council for Technical Education, (2013) 3 SCC 385 to hold that the affiliating university has no jurisdiction to interfere with the intake of seats once the seat intake has already been approved by the PCI. The relevant extract is as under,

“On perusal of the material on record, it is established that the institution of the petitioner has been accorded approval by the AICTE and the Pharmacy Council of India for intake of 100 seats. Therefore, the interference at the level of respondent nos. 3 and 4 appears to be without jurisdiction and for no valid justification. The Hon'ble Supreme Court in the case of Parshvanath Charitable Trust and Others Vs. All India Council For Technical Education and Others (supra) has held in paragraph 24 as under :

"24. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. **The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University.** The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. **Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/ recommendation granted by the AICTE.** These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system."

(emphasis supplied)

It is pertinent to note that an issue had arisen as to whether such matters are to be governed by the Pharmacy Act, 1948 or by All India Council of Technical Education Act, 1987 in relation to the subject of Pharmacy. This issue was explicitly decided by the Supreme court in the case of **PCI**

v S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Others 2020 SCC OnLine SC 296 observed as under:

“4... Therefore, the issue involved in the present batch of cases is regarding the applicability of the Pharmacy Act, 1948 (hereinafter referred to as the Pharmacy Act) or the All India Council of Technical Education Act, 1987 (hereinafter referred to as the AICTE Act) in relation to the subject of Pharmacy, including approval of courses of study, minimum standards of education required for qualification as a Pharmacist, registration as a Pharmacist, regulation of future professional conduct etc.”

The 3 Judge Bench in **S.K. Toshniwal case (supra)** has clarified that with respect to approval for intake of students into the course of Pharmacy, the matters would be governed by the Pharmacy Act, 1948 and PCI would have exclusive jurisdiction regarding the same. The relevant extract is as under:

“87. In view of the above and for the reasons stated above, it is held that in the field of Pharmacy Education and more particularly so far as the recognition of degrees and diplomas of Pharmacy Education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by the concerned institutions imparting education for degrees and diplomas in Pharmacy, **including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of the PCI shall only be followed by the institutions imparting degrees and diplomas in Pharmacy.** The questions are answered accordingly”

(emphasis supplied)

In light of the aforementioned decisions, it is clear that respondent 3 did not have jurisdiction to reduce the permitted intake once the same had been approved by the PCI, which had the exclusive jurisdiction.

Thus, the objection of the counsel for respondent no. 3 does not merit acceptance.

The order(s) dated 24.08.2020 passed by respondent 3 qua the petitioners are hereby quashed. The writ petitions are disposed of with the directions that the petitioner institution in writ petition No. 13890 of 2020 is permitted to intake 60 students for the academic year 2020-21 as duly approved by the Pharmacy Council of India.

Petitioner under writ petition No. 13887 of 2020 is permitted to intake 100 students for the academic year 2020-21 as duly approved by the Pharmacy Council of India.

However, it is clarified that admissions to the seats reduced by respondent no. 3 by means of the impugned order shall be completed on or before 01.11.2020 i.e. the last day of counselling.

Both the writ petitions are allowed in terms of the order passed above.

Copy of the judgment downloaded from the official website of the High Court shall be accepted as certified copy of this judgment.

Order Date :- 10.9.2020

Hasnain