

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 13064 of 2017**

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L.J. INSTITUTE OF PHARMACY....Petitioner(s)

Versus

PHARMACY COUNCIL OF INDIA & 1....Respondent(s)

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Appearance:

MR DC DAVE, SENIOR ADVOCATE WITH MR UDAYAN P VYAS,
ADVOCATE for the Petitioner(s) No. 1MS MANISHA L SHAH, GOVERNMENT PLEADER for the Respondent(s) No.
2MR DEVANG VYAS, ASSISTANT SOLICITOR GENERAL OF INDIA for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE S.G. SHAH**Date : 26/07/2017****ORAL ORDER**

1. Heard Mr. D. C. Dave, learned senior counsel appearing with Mr. Udayan P. Vyas, learned advocate for the petitioner, Ms. Manisha L. Shah, learned Government Pleader for the respondent No.2 and Mr. Devang Vyas, learned Asstt. Solicitor of India for the respondent No.1.

2. The petitioner herein is a Pharmacy College, which is functioning as such since more than a decade, but for some or other reason, since last couple of years, there are several issues between the parties, which includes issue regarding intake of students in Pharmacy College i.e. total number of students to be admitted in such Pharmacy College by the petitioner. The issue

regarding power to decide such total number of students to be admitted vests with which authority viz. Pharmacy Council of India being respondent No.1 herein or the All India Council for Technical Education ('AICTE', for short), is *sub-judice* in several other litigations, but ultimately, the issue is pending before the Hon'ble Supreme Court of India in *Writ Petition (Civil) No.372 of 2014 between Indira Bahuuddeshiya Shik.Sanstha & Anr. Vs. Pharmacy Council of India & Ors.* so also in *Civil Appeal No.365 of 2005 between All India Council for Technical Education Vs. P.S.M. Boarding House's College, Arch. & Ors.* The orders dated 23.7.2015 and 9.1.2017 in above referred Writ Petition (Civil) No.372 of 2014 are relevant to be recollected here:-

"Order dated 23.07.2015

We are informed that the Centralized Admission Process has been started. Issue notice on the application. In the meanwhile, we direct the respondents to permit the petitioners to admit the students through the Centralized Admission Process rounds to the course of Diploma in Pharmacy which is to be conducted in the 2nd Shift.

We make it clear that admission granted to the Signature Not Verified students shall be provisional.

We also make it clear that no equity shall be created in favour of the students by virtue of grant of such provisional admission which is liable to be cancelled.

We also make it clear that while granting admission to the students, the petitioners will clearly inform the students in writing that their admission is subject to the outcome of this petition so that the students are put to notice.

List the matter on 20th August, 2015 for disposal.

Order dated 9.1.2017

List I.A. along with the main matter after the decision in C.A. No. 364/2005 titled All India Council for Tech. Education v.P.S.M. Boarding House's College, Arch & Ors. is rendered."

3. Therefore, now, once the position is clear, and certain, irrespective of dispute regarding powers of either of the authority referred herein above to decide the total number of students to be admitted by such Pharmacy Colleges, the Hon'ble the Supreme Court of India has directed the respondent - authorities before it to permit the Colleges like the present petitioner to admit the students through Centralized Admission process, but with condition that such admission shall be provisional and no equity shall be created in favour of the students by virtue of such provisional admission, which is liable to be cancelled. It is also stated in such order that the College will clearly inform the students in writing that their admission is subject to the outcome of the petition; while granting admission to the students so as to put them to notice of such situation. However, even after such strict condition/s, in July, 2015, after more than a year, the Hon'ble Supreme Court of India has directed to list such matter only after decision is taken in Civil Application No.364 of 2005 and, therefore, now, till both these petitions are decided, practically, the relief of interim nature, permitting the Colleges to admit the students, remained in force, irrespective of disputes raised by authorities under reference.

4. In view of such position, *prima facie*, there is no hitch in extending such benefit to the present petitioner also. However, respondent No.2 being the Admission Committee for Professional Courses of the State Government i.e. Central Agency to monitor the admissions, has taken a stand that petitioner should not admit any student for the academic year 2017-2018 and, therefore, petitioner has no option, but to rush to this court seeking appropriate direction/s. Though the stand of respondent No.2 is never conveyed to the petitioner, petitioner has come to know that pursuant to decision taken in the Meeting No.02.277 of the Executive Committee Meeting of the Council held on 15th and 16th June, 2017 at New Delhi, a decision is taken to instruct the petitioner not to give admissions with an observation that if the students are admitted, the entire consequence shall rest on the petitioner.

5. Therefore, both respondents have come forward with a case that pursuant to letter dated 18.4.2017 by Gujarat Technological University, the respondent No.2 has been advised to check the approval of both the authorities i.e. AICTE and Pharmacy Council of India and to see that only minimum number of intake i.e. admission is to be approved. Respondent have also referred a letter dated 22.5.2017 by the respondent No.1 to respondent No.2 submitting that respondent No.2 is advised by respondent No.1 to verify the

relevant information before allowing any admission. As discussed herein above, when there is a decision to refuse the admission in the petitioner's Institution, petitioner is not entitled to continue the admission for this academic year. Letter dated 7.6.2017 of Gujarat Technological University ('G.T.U.', for short) is simply confirming the contents of its letter dated 18.4.2017, whereas, ultimately, letter dated 7.7.2017 by the G.T.U. to respondent No.2 makes it clear that pursuant to decision in the meeting of Executive Committee dated 15th and 16th June, 2017, the petitioner is not entitled to continue with the admission. All such letters are to be taken on record.

6. However, the fact remains that so far as all such correspondences are concerned, with reference to the minutes of the meeting of 15th and 16th June, 2017 by Executive Committee, it is necessary to disclose that restraining the petitioner from admitting the students is based upon the alleged deficiency in the institution as disclosed in the minutes of such meeting. Therefore, contents of such minutes is very much material to ascertain that whether respondents have any power and authority to restrain the petitioner by such minutes and that there is no arbitrariness or discrimination or irregularity in any manner whatsoever in such decision.

7. The perusal of minutes specifically confirms

that for as many as four other Institutions, the same Committee has taken a decision that courses and admissions and approval is subject to appointment of Principal and teaching staff and submissions of SDF for the same; whereas, so far as approval for petitioner is concerned, the relevant text reads as under:-

"257.2 It was noted that inspection report (March, 2017) has reflected huge deficiencies like-

- a) infrastructure is not adequate for 100 students.
- b) Principal is not qualified and teaching staff is not as per Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014
- c) many equipments are deficient.
- d) No. of hours devoted to each subject are less than prescribed.
- e) important registers like admission register, individual service register and acquaintance registers are not properly maintained.
- f) deficiencies pointed out in earlier inspection report have not been rectified.
- g) matter is sub-judice in Hon'ble Court.

257.3 In view of above, it was decided to -

- a) Instruct the institution not to make admissions and if the students are admitted the entire consequences shall rest on the institution.
- b) share the inspection report with AICTE along with deficiencies pointed out in March, 2017 inspection report for taking joint decision in the matter."

8. The bare reading of the minutes shows clear arbitrariness and discrimination inasmuch as when in case of four courses before three different institutions at Amroha, Hyderabad and Bhopal, when same Committee has approved the course in the institution, subject to appointment of Principal and teaching staff, in case of the

present petitioner, a ground is taken for denying the approval is that the Principal is not qualified and teaching staff is not as per the minimum qualification. In addition to such arbitrariness and discrimination, a strange deficiency is noted by the Committee when it is stated that matter is *sub-judice* before this Court. Thereby, though it is submitted before the Court that the Executive Committee has never intended it as deficiency, but there is an error in not disclosing such reason separately, irrespective of such explanation, the fact remains that in any case, the reference of previous litigation can never be considered against the petitioner for approval of course and admission, because in such previous litigation, when the respondents have tried to restrain the petitioner from admitting the students, this court has while allowing the prayer for interim relief, allowed the petitioner to continue the course and admission. Therefore, such reason can never be put-forth for refusing admission for the next year. This would certainly amount to contempt of court. However, taking a broad view of lacuna in drafting, I do not intend to take-up such issue any further at this stage, which may be taken up at the time of further hearing, if respondent/s fail to rectify their mistake.

9. However, it cannot be ignored that for last academic year also, respondents have tried to restrain the petitioner from continuing the

course and the institution and, therefore, petitioner has to prefer one Special Civil Application No.9506 of 2016 wherein the Co-ordinate Bench has by a detailed order dated 25.7.2016 and after discussing all relevant judgments on the subject, held that there is strong *prima facie* case in favour of the petitioner and, therefore, while admitting the petition, allowed the petitioner to admit the students as per the total intake of 240 admissions as per the approval granted by AICTE with certain directions to the petitioner. It is surprising to note that thereafter, though present respondent No.1 has accepted such judgment, respondent No.2 herein has challenged such judgment in Letters Patent Appeal before the Division Bench. However, the Division Bench has also confirmed such judgment of Single Judge by its order dated 2.8.2016 in Letters Patent Appeal No.658 of 2016 whereby Letters Patent Appeal was dismissed.

10. With reference to the deficiencies noted by the Council of Executive Committee, petitioner has pointed out that in fact, compliance report is already forwarded to respondent No.1 as back as on 5.4.2017, copy of which is produced at Annexure-C, disclosing that, practically, there is no deficiency in accordance with law and rules and additional queries raised by the respondents, have been resolved by the petitioner. However, it seems that respondents have failed to appreciate

such compliance report at all.

11. It is pertinent to note that after compliance of queries raised by the respondents, in fact AICTE has by their communication dated 10.4.2017, extended the approval for the academic year 2017 - 18 in favour of the petitioner, which permits the petitioner to continue the admission as per the previous order for total 240 students as disclosed in such extension order, which is in confirmation of details disclosed in judgment and order dated 25.7.2016 in Special Civil Application No.9506 of 2016, in fact the dispute with reference to the primacy between Pharmacy Council of India and AICTE, has already been considered in such previous round of litigation and though such issue is pending before the Hon'ble Supreme Court of India, the Hon'ble Supreme Court has continued the approval of admission with some strict observations, which are referred herein above and thereafter, when Co-ordinate Bench of this Court has endorsed such view in previous round of litigation, and when none of the respondents have challenged it before the Hon'ble Supreme Court of India, practically, their action to take similar stand for this academic year, is not only unwarranted, but arbitrary and discriminatory and, therefore, the petitioner is entitled to interim relief.

12. It is also clear that once AICTE has approved the admissions, there is no reason for

respondents to disturb such admission process and students. It is also surprising to note that instead of directly communicating with the petitioner, respondents have published a notice on its website, disclosing that petitioner has been placed in 'No Admission Zone' and that too without offering any reasonable opportunity to the petitioner and without considering the compliance report dated 5.4.2017 and ignoring the approval dated 10.4.2017 by AICTE and as late as on 6.7.2017 i.e. after three weeks' of their decision. It is also evident from record and clear legal position that Executive Committee has no power or authority to take final decision and, therefore, even in minutes of meeting of Executive Committee held on 15th and 16th June, 2017, it is categorically disclosed by the Committee that decisions are subject to ratification by Central Council of Pharmacy Council of India. It is also evident that there is no decision by Central Council of Pharmacy Council of India till date and it is also evident that no such deficiency was ever found for last more than a decade by any such authority.

13. Thereby, though facts and circumstances are very much clear to confirm that petition requires consideration and petitioner is entitled to interim relief as prayed for, when respondents are trying to emphasize that the issue raised in this petition, is not with reference to the capacity and eligibility of intake i.e. total

number of admission of students, but it is with reference to the deficiency in the institution, which would ultimately affect the career of the students, irrespective of all other factual details, it is to be recorded that respondents failed to realise that petitioner - institution is functional for last more than a decade and thereby, the relevant question that would arise for consideration, based upon above-referred submission, would be that first time when the respondents have noticed deficiency i.e. only after petitioner entered into litigation or initially when first time approval was granted to the petitioner. Therefore, it seems that there is substance in the submission by the petitioner that reasons for denying the approval is different than what is submitted before the Court.

14. Respondents have also referred the Special Civil Application No.7890 of 2011. However, therein, initially, even the Division Bench has permitted the petitioner to admit the students by directing the respondent No.2 to allot the students to the petitioner, but only because petitioner has withdrawn that petition in the year 2013 to make representation with a liberty to move the Court and when there is favourable order in favour of the petitioner in Special Civil Application No.9506 of 2016, which is confirmed in Letters Patent Appeal, withdrawal of the previous petition cannot be considered as

negative against the petitioner and pendency of Special Civil Application No.9506 of 2016, cannot be considered deficiency or negative against the petitioner.

15. As against that petitioner has relied upon following judgments:-

(1) Orders dated 27.7.2011 and 8.7.2013 of Gujarat High Court in Special Civil Application No.7890 of 2011 between LJ Institute of Pharmacy Through Manish Dhirajlal Shah;

(2) In the matter of Parshvanath Charitable Trust & Ors. Vs. All India Council for Technical Education & Ors. reported in (2013)3 SCC 385;

(3) Order dated 25.5.2016 of Hon'ble Supreme Court of India in Tirupati Foundation Trust Vs. All India Council for Technical Education;

(4) Order dated 23.6.2017 of Bombay High Court in Writ Petition No.6540 of 2015 with Civil Application No.8875 of 2016 with Civil Application No.7776 of 2017 between The Shirpur Education Society Vs. The State of Maharashtra & Ors.;

(5) Order dated 23.6.2017 of Bombay High Court in Writ Petition No.6701 of 2016 with Civil Application No.7899 of 2017 between Shiva Trust's Rajesh Bhaiyya Tope College of Pharmacy at Nipani - Bhalgaon Vs. The State of Maharashtra & Ors.;

(6) Order dated 23.6.2017 of Bombay High Court in Writ Petition No.7819 of 2017 between Jamia Islamia Trust's Jamia College of Pharmacy (Institute) Vs. The State of Maharashtra & Ors.;

16. The sum and substance of all such judgments is clear, which confirms that different courts

have, considering the judgments of Hon'ble Supreme Court of India continued the approval and admission of similarly situated Pharmacy Colleges of different places. Therefore also, petitioner is claiming equal treatment and, thereby, there is substance in the petition to extend equal treatment. Amongst them, the judgments of Parshvanath Charitable Trust (supra) and Tirupati Foundation Trust (supra) makes it clear that there cannot be disclosure of deficiency after 10.4.2017, which is in the present case done only on 7.7.2017.

17. In view of above facts and circumstances, petition needs consideration and hence, it required to be admitted for further consideration. Hence, **rule**, returnable on 11.10.2017. Parties shall complete the pleadings before 29.9.2017. However, it is made clear that there would be interim relief in terms of paragraphs 17(b) and (c) till the disposal of the petition with following directions and conditions:-

a. Respondents are directed to permit the petitioners to admit the students through the Centralized Admission Process rounds to the course of Diploma in Pharmacy;

b. Admission granted to the students shall be provisional and no equity shall be created in favour of the students by virtue of grant of such provisional admission which is liable to be cancelled;

c. While granting admission to the students, the petitioners will clearly inform the students in writing that their admission is subject to the outcome of this petition so that the students are put to notice;

d. Respondents and competent authority/ies may complete inspection of the petitioner - Institution, if necessary within four weeks and deficiencies, if any in accordance with rules, which needs to be removed, shall be conveyed to the petitioner within a week thereafter.

e. Petitioner shall remove all such deficiency/ies in accordance with rules within four months on receipt of such communication and compliance shall be conveyed to the competent authority/ies immediately thereon.

f. Any grievance with reference to the deficiency/ies and its compliance or non-compliance should be agitated in accordance with law at the earliest on completion of above exercise, but in any case six months before the commencement of next academic year so as to have enough time to all concerned to deal with such issue/s.

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THE HIGH COURT (S.G. SHAH, J.)
OF GUJARAT

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