

Neutral Citation No. - 2023:AHC-LKO:84898

Court No. - 7

Case :- WRIT - C No. - 10427 of 2023

Petitioner :- M.J. Charitable Trust, Meerut Thru. Authorized Signatory, Sri Akash Sharma

Respondent :- State Of U.P. Thru. Prin. Secy., Deptt. Of Technical Education, Lucknow And Others

Counsel for Petitioner :- Gaurav Mehrotra, Paavan Awasthi

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Ravi Singh
and

Case :- WRIT - C No. - 9709 of 2023

Petitioner :- Prabhat College Of Pharmacy, Kanpur Dehat Thru Chairman, Prabhash Chandra Kureel

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy., Deptt. Of Technical Education, Lucknow And Others

Counsel for Petitioner :- Ajay Pratap Singh

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Ravi Singh
and

Case :- WRIT - C No. - 9717 of 2023

Petitioner :- Sri Ramdham Mahavidyalaya Deptt. Of Pharmacy, Jhansi Thru. Secy. Sharad Khare

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt. Of Technical Education, Lko. And 2 Others

Counsel for Petitioner :- Ajay Pratap Singh

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Ravi Singh
and

Case :- WRIT - C No. - 9844 of 2023

Petitioner :- Maa Kusum Charitable Shikshan Sansthan, Fatehpur Thru. Authorized Signatory, Sri Rohit Chaudhari

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Technical Education, Lucknow And 3 Others

Counsel for Petitioner :- Paavan Awasthi

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Ravi Singh
and

Case :- WRIT - C No. - 9530 of 2023

Petitioner :- Late Pooran Ram Prakash Dixit College Of Pharmacy, Hamirpur Thru. Manager Sanjeev Dixit

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy., Deptt. Of Technical Educational, Lucknow And Others

Counsel for Petitioner :- Ajay Pratap Singh

Counsel for Respondent :- C.S.C., Atul Kumar Dwivedi, Ravi Singh

Hon'ble Abdul Moin,J.

1. In compliance of order dated 20.12.2023, memo of amended writ petition (In Writ-A No. 10427 of 2023) filed today by the learned counsel for the petitioner be kept on record.

2. Sri Vivek Shukla, learned Additional Chief Standing counsel has passed on a compilation of various papers including the letter dated 13.12.2023 passed by the State Government which all be kept on record.

3. Heard Sri Gaurav Mehrotra, learned counsel for the petitioner, Sri Vivek Shukla, learned Additional Chief Standing counsel appearing on behalf of the State-respondent, Sri Atul Kumar Dwivedi, learned counsel appearing on behalf of the respondents no. 2 & 3 and Sri Ravi Singh, learned counsel appearing on behalf of the respondent no. 4.

4. Learned counsel for the petitioner contends that the issue involved in WRIT - C No. - 10427 of 2023, WRIT - C No. - 9709 of 2023, WRIT - C No. - 9717 of 2023, WRIT - C No. - 9844 of 2023 and WRIT - C No. - 9530 of 2023 are the same. As such, the Court proceeds to hear all the writ petitions together. For the sake of convenience, the facts of WRIT - C No. - 10427 of 2023 are being taken.

5. Instant writ petition has been filed praying for the following main reliefs:-

"a. Issue writ, order or direction in the nature of certiorari quashing the order dated 13.10.2023 passed by the opposite party no. 1, recommending the University not to grant affiliation to the institutions for the academic session 2023-24, true copy of which is annexed herewith as Annexure No. 1.

(a-1) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.11.2023 as contained in Annexure No. 5-A to the writ petition.

b. Issue writ, order or direction in the nature of certiorari quashing the order dated 19.10.2023 passed by the opposite party no. 2, i.e University rejecting the application of the petitioner for grant of

affiliation for the academic session 2023-24, true copy of which is annexed herewith as Annexure No. 2.

c. Issue a writ, order or direction in the nature of certiorari quashing the impugned counselling schedule, impugned academic calendar and impugned order dated 09.11.2023 issued by the opposite party no. 2 University, true copy of which are annexed as Annexure No. 3, 4 & 5 respectively.

d. Issue writ, order or direction in the nature of mandamus commanding the opposite party no. 2 University to grant the requisite Affiliation to the petitioner for conducting B. Pharma Course for 60 seats for the academic session 2023-24 as per the approval granted by the Pharmacy Council of India.

e. Issue writ, order or direction in the nature of mandamus commanding the University to conduct fresh counselling process for . Pharma Course for the academic session 2022-23 only after completion of affiliation process as per the schedule laid down by the Hon'ble Supreme Court in Parshvanath Charitable Trust v. All India Council for Technical Education, reported in (2023) 3 SCC 385 as well as the schedule laid down by the Hon'ble Supreme Court for the current academic session vide order dated 06.09.2023 passed in Misc. Application No. 1927 of 2023 in Civil Appeal No. 9048 of 2012 and include the petitioner's institution in the said process upon the grant of requisite affiliation to the petitioner.

f. Issue writ, order or direction in the nature of mandamus commanding the Opposite Party No. 2 University to permit and enable the petitioner to take admission for the B.Pharma Course for academic session 2023-24."

6. Bereft of unnecessary details, the contention of learned counsel for the petitioner is that for the running of Bachelor of Pharmacy Course (hereinafter referred to as "B.Pharma") to the petitioner-Institution, a No Objection Certificate (hereinafter referred to as "NOC") had been granted by the State Government on 24.12.2021. Thereafter, the APJ Abdul Kalam Technical University (hereinafter referred to as "University") granted its consent on 29.01.2022 for grant of affiliation. The Pharmacy Council of India (hereinafter referred to as "PCI") granted its approval on 04.05.2023. Subsequent thereto, an inspection was conducted by the University and the report was submitted on 16.07.2023 to the State Government. The Committee vide its recommendation dated 28.07.2023, a copy of which is annexure 25 to the writ petition recommended the grant of affiliation to the petitioner.

7. It is contended that for the previous year i.e 2022-2022, the matter had been considered by the Hon'ble Supreme Court vide Special Leave to Appeal (C) No. 1793 of 2023 Inre; Bhardwaj Shiksha Sewa Samiti Vs. State of U.P and Ors which was decided on 01.05.2023, a copy of which is annexure 19 to the writ petition per which the Hon'ble Supreme Court directed the PCI to issue permission within a period of one week and on such permission being granted, the respective State Government and respective Universities were required to consider the issue with regard to grant of permission and affiliation within a period of four weeks from the date of permission being granted by the PCI.

8. The contention is that in the case of petitioner, the approval was granted by the PCI on 04.05.2023 consequently, keeping in view the order passed by the Apex Court, the State Government and the respondent- University was required to consider the issue with regard to grant of permission and affiliation which was to be done atleast by 04.06.2023. However, the State Government and the University continued to pass the buck on each others shoulders with the result that the petitioner has been constrained to file the instant writ petition praying for the aforesaid reliefs.

9. Upon filing of the petition, this Court had passed an order dated 29.11.2023 which for the sake of convenience is reproduced below:-

"Heard.

Learned counsel for contesting parties inform that the matter in issue is under consideration in a bunch of writ petitions leading being Writ C No. 9530 of 2023 in re: Late Pooran Ram Prakash Dixit College Of Pharmacy, Hamirpur Thru. Manager Sanjeev Dixit vs State of U.P. and others and prays that this writ petition may be connected with the aforesaid writ petition.

As such, list this case alongwith Writ C No. 9530 of 2023.

In the meanwhile learned Standing Counsel shall seek instructions pertaining to the order impugned in as much as it has been indicated in the order impugned that no affiliation be granted to the institution till such time (a) comparative chart of the students strength is not sent by the concerned University and (b) the District Magistrate does not have the

physical and spot inspection conducted.

The contention is that so far as the spot inspection is concerned this Court vide the interim order dated 06.06.2023 passed in Writ C No. 4877 of 2023 passed in re: Maa Lilawati Sudeshwari Sikshan Thru. Its President Sri Ajay Kumar Singh And Another vs State of U.P. and others, a copy of which is annexure 27 to the petition, has stayed the order dated 18.05.2023 which required for a spot inspection and as such there cannot be any occasion for the respondents while passing the order impugned dated 13.10.2023 to indicate the aforesaid fact.

So far as the comparative strength of students is concerned, it is contended that there is no provision under which comparative strength is to be submitted by colleges.

Responding to that, Shri Atul Dwivedi, learned counsel appearing for the University states that comparative strength of students have already been sent to the State Government.

As such, learned Standing Counsel shall seek instructions as to the occasion of the state government to require comparative strength of students to be sent by the University.

In the meanwhile, it is provided that in case the comparative strength of students has been sent by the University then the State Government may process the affiliation of the petitioner institution in case there is no legal impediment. "

10. In pursuance to the order dated 29.11.2023 it was informed by the learned counsel appearing on behalf of the University that a report had been sent by the University to the State Government on 05.12.2023 and earlier the prospective plan along with the feasibility report had also been sent by the University to the State Government on 25.11.2023 in pursuance to the direction issued by this Court.

11. Subsequently, when the matter was taken up on 20.12.2023, it emerged that during pendency of the instant writ petition, the State Government has passed another order dated 29.11.2023 requiring the University to send a detailed report on certain parameters.

12. As this Court found that the order passed by the State Government order dated 29.11.2023 was prima facie contrary and in contradiction to the details required as per the order dated 13.10.2023, consequently, this Court had passed a detailed order on 20.12.2023 which for the sake of convenience is reproduced below:-

"Order on amendment application

Heard learned counsel for the petitioner, Sri Nitin Mathur, learned

Additional Chief Standing counsel appearing on behalf of the State-respondent, Sri Atul Kumar Dwivedi, learned counsel appearing on behalf of the respondents no. 2 & 3 and Sri Ravi Singh, learned counsel appearing on behalf of the respondent no. 4.

This is an application for amendment of the writ petition.

Learned counsel for the respondents state that they do not have any objections to the amendment application being allowed, accordingly the application for amendment is allowed.

Let necessary amendment be carried out during the course of the day and amended writ petition be filed within twenty four hours.

Order on memo of writ petition

The urgency expressed by the learned counsel for the petitioner is that in terms of the order issued by the Hon'ble Supreme Court on Misc. Application No. 1927 of 2023 in C.A.No. 9048 of 2012 Inre; Parshavnath Charitable Trust Vs. All India Council for Technical Education and Ors dated 06.09.2023, a copy of which is annexure 23 to the writ petition, the date for completion of approval process had been extended up to October, 31st , 2023 and appeals/ compliance till November, 30th , 2023 to the Pharmacy Council of India. It was also provided that the counselling shall stand extended by one month thereafter i.e up to 31st December, 2023.

The contention is that the affiliation is to be granted by the respondent no. 2- University which has not been granted till date considering Section 23 of the Uttar Pradesh Technical University Act, 2000 (hereinafter referred to as "Act, 2000") which requires the previous sanction of the State Government to admit any college for affiliation.

The contention is that the State vide its order dated 13.10.2023, a copy of which is annexure 1 to the writ petition had required the University to submit the details on certain parameters and the District Magistrate was required to conduct physical and spot inspection.

So far as the physical and spot inspection is concerned the same has been stayed by this Court in Writ-C No. 4877 of 2023 Inre; Maa Lilawati Sudeshwari Sikshan Thru. Its President Sri Ajay Kumar Singh And Another Vs. State of U.P and Ors, a copy of which is annexure 27 to the writ petition.

So far as the parameters were concerned the report of which was required to be submitted by the University, the same pertained to the feasibility report pertaining to details regarding district and year wise of the sanctioned seats and the students who had taken admissions and appeared in the examinations in the previous five years.

Sri Atul Dwivedi, learned counsel appearing on behalf of the respondents no. 2 & 3 had submitted on an earlier occasion, as stands recorded in the order dated 29.11.2023, that the comparative strength of the students have already been sent to the State Government.

Subsequent thereto, the State Government, instead of granting the sanction for the purpose of affiliation of the petitioner's institution, has passed an order dated 29.11.2023, a copy of which is annexure 5A to the application for amendment per which in paragraph 8 certain other parameters have been indicated which are again required to be submitted by the University.

The argument is that on one pretext or the other the State is not granting

the prior sanction more particularly when the last date for counselling is 31.12.2023. It is also contended that the order dated 29.11.2023 now requiring the University to submit further information would be contrary to the earlier order of the State dated 13.10.2023 which had required the information to be submitted by the University only on certain parameters which already stands fulfilled by the University and consequently, by means of the order dated 29.11.2023, the State cannot ask the University to submit further information on other parameters not contained in the order dated 13.10.2023 as in case such action is permitted at the end of the State Government, there would not be any end to it and the State Government can continue to requisition one information after the other so as to frustrate the affiliation of the petitioner.

Prima facie, a perusal of the order dated 13.10.2023 as passed by the State Government whereby the information had been required to be sent by the University viz-a-viz the statement as given by Sri Atul Dwivedi, learned counsel for the respondents no. 2 & 3 as stands recorded in the order dated 29.11.2023 of the information having been sent and as per the order dated 29.11.2023 now passed by the State Government requiring further information, appears to be colourable exercise of power vested in the State inasmuch as there cannot be a case in which after the State had required the University vide order dated 13.10.2023 for supplying the information on certain parameters and admittedly the said information has been provided by the University, instead of processing the application for affiliation further information cannot be sought on different parameters are together so as to not pass any order for the purpose of previous sanction for affiliation as provided under Section 23 of the Act, 2000.

However, without observing anything further, learned Additional Chief Standing counsel is granted time till tomorrow i.e 21.12.2023 to seek instructions as to the requirement of the further information as indicated in the order dated 29.11.2023 as passed by the State Government more particularly when the same runs prima facie contrary to the information as had been sought earlier by the State Government from the University as emerges from a perusal of the order dated 13.10.2023, a copy of which is annexure 1 to the writ petition.

It is further provided that seeing the urgency wherein the counselling is scheduled to come to an end on 31.12.2023 the case be listed tomorrow i.e 21.12.2023 at 0215 PM.

It is also provided that in case the instructions are not received then the respondent no. 1 i.e Principal Secretary, Department of Technical Education, Civil Secretariat, Lucknow shall appear before this Court along with records to assist the Court. "

13. In pursuance thereof, Sri Vivek Shukla, learned Additional Chief Standing counsel has argued on the basis of instructions that have been sent by the respondent no. 1 that the order dated 29.11.2023 has been passed considering the earlier letter that had been sent by the State Government to the University on 06.07.2023 per which the University was required to send a detailed report in terms of the

Government order dated 19.12.2017 which, apart from the other details as were required to be disclosed by the University, also required that in the districts having polytechnics in the private sector where the vacant seats are more than ten percent, no permission be given to open private polytechnics. It is contended that though the University submitted its report but the report did not fall within the parameters as had been specified in the Government order dated 29.12.2017 which thus entailed the State Government to require the University to submit a detailed report. The University again sent a detailed report on 05.12.2023 which has been considered by the State-Government but vide order dated 13.12.2023, as the parameters in which the report was required are again lacking in the report submitted by the University as such, University has again been required to submit a detailed report in this regard as per the details and parameters indicated in letter dated 13.12.2023.

14. Sri Vivek Shukla, learned Additional Chief Standing counsel also states that in case the report is submitted by the University expeditiously, an endeavour shall be made to process the case of the petitioner's institution for its affiliation keeping in view the order passed by the Apex Court dated 01.05.2023.

15. Sri Shukla has also stressed upon the provisions of Section 23 of the Uttar Pradesh Technical Universities Act, 2000 (hereinafter referred to as "Act, 2000") to state that the affiliation can only be granted with the previous sanction of the State Government and the previous sanction has still not been given by the State as the University has failed to submit the detailed report as has been required to be submitted by it to the State Government and consequently, the prior sanction for affiliation has not been granted by the State Government as of date,

16. On the other hand, learned counsel for the petitioner has urged

that a perusal of the orders which have been passed both by this Court, as well as by Apex Court dated 01.05.2023 would all indicate that although the State Government is required to act within a specified time yet on one pretext or the other, the affiliation is being delayed so as to entail no affiliation being granted to the petitioner's institution with the result that the petitioner's institution will be unable to participate in the counselling which would be coming to an end by 31.12.2023.

17. The counselling coming to an end on 31.12.2023 is strongly opposed both by Sri Atul Dwivedi, learned counsel appearing on behalf of the University and Sri Vivek Shukla, learned Additional Chief Standing counsel by contending that a case for counselling would only arise in case the petitioner's institution is to be granted an affiliation inasmuch as without there being any affiliation there cannot be any counselling keeping in view the law laid down by the Apex Court in the case of **Jawaharlal Nehru Technological University Vs Crescent Educational Society and Ors** reported in **MANU/SC/1115/2021**.

18. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the records what emerges is that admittedly there is an order of Hon'ble Supreme Court dated 01.05.2023 which had required the PCI to grant permission and upon such permission being granted, the State Government and the respective Universities were required to consider the issue with regard to grant of permission and affiliation within four weeks. Admittedly, the permission was granted by the PCI on 04.05.2023 and as such, considering the judgment of the Apex Court, the State Government and the Universities were required to consider the issue with regard to permission and affiliation of the petitioner-Institution at least by 04.06.2023. However, on one pretext or the other, the matter for affiliation continued to be sent by the State Government to the

University and after submission of a report by the University again to the State Government and as of date the buck continues to pass from the State Government to the University. Section 23 of Act, 2000 requires a previous sanction of the State Government to admit any college which fulfills conditions of affiliation. Once a prior sanction of the State Government is required consequently any affiliation which is to be granted to the petitioner can only be granted with the previous sanction of the State Government which incidentally has still not been granted till date.

19. However, the Court may also observe that an NOC had been granted earlier by the State Government on 24.12.2021 and the petitioner-Institution is also having a recommendation of the Committee dated 28.07.2023 in which one of the members was the Special Secretary of the Technical Education Department which Committee has also recommended the affiliation of the petitioner-Institution. Despite the said recommendation, the State Government in its wisdom has again required a detailed feasibility report to be submitted by the University on certain parameters including the parameters as laid down in the Government Order dated 19.12.2017 as emerges from a perusal of the order dated 13.12.2023 and the earlier reports which have been submitted by the University on 25.11.2023 and 05.12.2023 have not been found complete in all respects.

20. Considering the aforesaid more particularly when as per the provisions of Section 23 of the Act, 2000 the previous sanction of the State Government is required and the State Government vide its letter dated 13.12.2023 has required the respondent-University to submit its report on certain parameters as such the instant writ petition is disposed of with the direction to the University to comply with the order of the State Government dated 13.12.2023 of sending its report. Considering that the entire issue appears to be covered by order of Hon'ble Apex Court dated 01.05.2023 which requires the entire

exercise to be done within a period of four weeks from the date the PCI granted its approval which approval has been granted and a substantial period of time has already lapsed as such the University would submit its report within a period of three days from today to the best of its ability as desired by the State Government vide order dated 13.12.2023. As soon as the report is submitted by the University and in case the report is to the satisfaction of the State Government then the State Government shall process the same and pass an order pertaining to the previous sanction for grant of the affiliation to the petitioner-Institution in accordance with law, the Act, 2000 and the relevant rules and the Government orders governing the subject, which order would be passed within a period of two days, the time as suggested by the learned Additional Chief Standing Counsel for the State, from the date of receipt of the report from the University.

21. The University as well as the learned counsel for the State shall proceed to comply with this order without waiting for the certified copy of this order.

22. Let a certified copy of this order be provided to the learned counsels appearing on behalf of the contesting parties today itself on payment of usual charges.

Order Date :- 21.12.2023
Pachhere/-

(Abdul Moin, J)