

Court No. - 19

Case :- WRIT - C No. - 11227 of 2023

Petitioner :- Shiv Charitable Trust Meerut Thru. Trustee Shri Lal Babu Singh And Another

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

Counsel for Petitioner :- Mohd.Altaf Mansoor,Pallavi Singh,Sumit Mishra,Tanay Chaudhary

Counsel for Respondent :- C.S.C.,D.K. Singh Chauhan,Ravi Singh

Hon'ble Jaspreet Singh,J.

A mention was made in the morning at the time when the Court had assembled seeking permission for taking up of the matter today itself which relates to Counseling of Course of D. Pharma between 16.12.2023 to 26.12.2023 and it has further been submitted that since there were certain orders which were passed by the Division Bench of this Court recently in pursuance whereof the matters are being entertained by the Court and orders have been passed and the petitioners being similarly situated, hence, their petitions may be taken up today on account of the aforesaid circumstances giving rise to urgency.

The Court had permitted for taking up of the matter today itself and in view thereof, the matter has been placed before the Court.

Shri Md. Altaf Mansoor, learned counsel for the petitioner, Shri Nitin Mathur, learned Additional Chief Standing Counsel for the State-respondents, Shri Ravi Singh, learned counsel for the Pharmacy Council of India and Shri D.K. Singh Chauhan, learned counsel for the respondents No.3 and 4.

Learned counsel for the petitioners submitted that they are authorized Institutions having received "No Objection Certificate" from the State-respondents for a D. Pharma Course. It is also submitted that the petitioners have the necessary clearance and approval from the Pharmacy Council of India for the Academic Session 2023-2024.

It has further been submitted that by means of the impugned order, the respondent No.3 has informed that they have recommended to the Pharmacy Council of India that they may

not accord approval to the petitioners and the request made by the petitioners for grant of affiliation has been turned down, despite there being no deficiency on the part of the petitioners especially in view of the fact that they have already been granted approval by the Pharmacy Council of India.

It is also urged that the impugned order is contrary to the dictum passed in a bunch of writ petitions and decided by a Coordinate Bench of this Court in **WRIT-C No.8389/2023 - H M S College of Pharmacy v. State of U.P. & Ors., 2023:AHC-LKO:63945**, wherein it has been held that the respondents No.3 and 4 do not have the right to refuse the affiliation or reject the same.

It is further stated that the decision of the Coordinate Bench in **H M S College of Pharmacy** (supra) was assailed in a Special Appeal No.504/2023 before the Division Bench of this Court wherein the Division Bench did not stay the operation of the order rather it was provided that the parties are permitted to proceed with second round of counseling from 16.12.2023. It was further provided that insofar as the direction of the learned Single Judge to give the benefit of the judgment to similarly situated colleges is concerned, it was provided that such colleges if they so desire may take appropriate steps by filing separate petitions as the same were not before the Division Bench of this Court.

Relying upon the aforesaid observations, the submission is that the learned Single Judge in the case of **H M S College of Pharmacy** (supra) while quashing the counseling had granted the benefit of the judgment to all the colleges which are approved by the Pharmacy Council of India irrespective of whether they have challenged the same or not. It is thus, urged that in the instant case, the petitioners have the necessary approval from the Pharmacy Council of India and, therefore, the impugned order is patently erroneous because of which the petitioners are unable to participate in the counseling, hence, appropriate orders be passed to enable the petitioners to get the benefit of the counseling especially once it has been held that the respondents No.3 and 4 did not have the authority to withhold or refuse affiliation once the approval has been granted by the Pharmacy Council of India.

It is also pointed out that the counseling commenced from 16.12.2023 and unless an interim order is granted to the petitioners would be subjected to hardship apart from the fact large number of students would also be at personally affected.

Shri D.K. Singh Chauhan, learned counsel appearing for the

respondents No.3 and 4 submitted that insofar as the decision rendered by the Coordinate Bench in **H M S College of Pharmacy** (supra) as well as the order passed by the Division Bench of this Court dated 13.12.2023 is concerned, the same is not disputed especially in light of position which obtains from the said judgment and order of the Division Bench of this Court, respectively.

It is further submitted that the counseling scheduled which commenced from 16.12.2023 had indicated that choice for filling all the candidates commenced on 16.12.2023 to 18.12.2023 and on 19.12.2023 the seat allotment was to be done. Since, the counseling has already commenced, at this stage, if any indulgence is granted, it would affect the counseling schedule apart from the fact that each day such petitions can be filed which would be never ending and counseling would not be completed which is not a desirable situation.

Shri Ravi Singh, learned counsel for the respondent - Pharmacy Council of India submits that insofar as the petitioner institutions are concerned, they have been granted approval from the Pharmacy Council of India, however, since the petition filed today and are being taken up, as a matter of abundant caution it may be clarified that in case if the Court desires to grant indulgence to the petitioners then it should be made subject to the fact that such colleges/institutions must have the approval of the Pharmacy Council of India failing which the petitioners may not have the benefit of the order.

Considering the facts and circumstances and also having taken note of the decision of the Coordinate Bench of this Court in **H M S College of Pharmacy** (supra) as well as the order passed in Special Appeal No.504/2023 where the Division Bench has granted the benefit of the judgment to the similarly situated colleges provided that they approach the Court inasmuch as the learned Single Judge in **H M S College of Pharmacy** (supra) had already granted the benefit to all the institutions.

In light of the above, this Court deems appropriate as an one time measure it is provided that the benefit of the judgment of the Coordinate Bench of this Court in **H M S College of Pharmacy** (supra) shall also be extended to the petitioners so also the benefit of the order passed by the Division Bench of this Court and the institutions which have been granted approval from the Pharmacy Council of India, they can be considered for participating in the counseling provisionally and would be granted temporarily affiliation which needless to say would be in accordance with Rules and Regulations.

It is further provided that since the date for choice of filling for all colleges has lapsed, accordingly, the respondents No.3 and 4 shall extended the date to accommodate the petitioner and it is made clear that this indulgence is granted as a last resort. It may not be considered any further for if such petitions are entertained at the asking then it would amount to on ongoing trickle which may lead to situation where the counseling may not be finalized.

The protection and indulgence granted shall be subject to the final decision in Special Appeal No.504/2023.

With the aforesaid, the petition is **disposed of**.

Order Date :- 19.12.2023

Rakesh/-