

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.641 of 2015

Date of decision:29.4.2015

Manav Institute For Pharmacy

....Appellant

VERSUS

Pt. B.D. Sharma University of Health Sciences, Rohtak

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MS. JUSTICE LISA GILL

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vikram Vir Sharda, Advocate for the appellant.

Mr. Ramesh Hooda, Advocate for respondent.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 22.04.2015 whereby the writ petition filed by the appellant claiming a writ of certiorari for quashing a communication dated 12.09.2014 was dismissed.

The appellant was established in the year 2007 to impart education in the field of Pharmacy. The appellant in order to run the courses in Pharmacy has to seek approval from All India Council for Technical Education (for short 'AICTE'); Pharmacy Council of India and also to be affiliated to the respondent-University. The affiliation is being granted to the appellant by the University on year-to-year basis.

As per the Ordinance on the conditions of affiliation of Colleges and Institutions to the privileges of the University, the last date for submission of an application along with prescribed process

fee is 31st October of the preceding year of which the Institute is proposed to start the classes. Such application can be entertained up to 31st December of the preceding year on payment of 50% extra charges and up to 31st March of the year concerned on payment of 100% extra charges. The relevant conditions read as under:-

“2. An application for grant of affiliation shall be made by the officer authorized by the Govt of Haryana in the case of a Govt. college/institution and by the Chairperson of the Managing Body/Trust/Society or any other authority appointed for the purpose by the Management of the college in the case of non-govt. college alongwith the prescribed fees.

(A) Last date for submission of application/proposal alongwith prescribed processing fee for new College/Institute/increase intake/additional course(s)/specialization/subject(s) etc. without late/extra fee shall be 31st Oct. of the preceding year to which it is proposed to start.

(B) Proposal/application shall be entertained upto 31st December of the preceding year on payment of 50% extra charges and upto 31st March of the year concerned on payment of 100% extra charges.”

The appellant submitted an application for seeking affiliation for the year 2014-15 on 19.05.2014. Such application was processed by the University when an inspection team was deputed on 30.06.2014. The Inspection Committee found the following deficiencies:-

“1. The institute has total 10 laboratories for B. Pharm. Course (03 Pharmaceutics, 03 Pharm. Chem., 02 Pharmacology (including APHE lab) and 02 Pharmacognosy labs). All labs need heavy upgradation with regard to shelves, instrumentation, and water supply for the proper working of students. Labs shall also be provided with exhaust fans and fume hoods especially in chemistry labs. Condition of aseptic room in microbiology lab is miserable and shall be improved immediately. For the proper maintenance of the biological kits and some special chemicals, refrigerator shall be provided in biochemistry and microbiology labs.

2. Faculty rooms are available but proper partitioning shall be provided.
3. Machine room needs upgradation with solid platforms for installation of machinery. The institute needs to purchase immediate basic machinery e.g. rotary tablet making machine, coating and polishing pans, roller compactor (granulator) etc.
4. Instrumentation lab needs to be upgraded with microprocessor based equipments/instruments like UV-Visible spectrophotometer, electronic moisture balance, 6 stage dissolution apparatus, electronic balances etc. with proper arrangement and environment control.
5. Computer lab is having only 12 systems, out of which internet is available only on 04 computers. The institute is required to upgrade computer lab with at least 24 computers, 04 printers and air-conditioning.
6. Library is having total 3316 books with 130 books added last year (Documents attached). Total 08 journals are available and online (DELNET) subscription, but no supporting document has been provided by the institute in this regard.”

After such deficiencies were recorded, a note was given that all the abovementioned equipments and instruments need to be installed or purchased and verified before the admission of the batch 2014-15, otherwise extension of provisional affiliation may be withheld. It was recommended that the College may be given provisional affiliation of B. Pharm. Course for the session 2014-15 subject to the compliance of the above observations. Such recommendations were considered by the University when a communication dated 14.07.2014 (Annexure P-7) was addressed to the petitioner after the deficiencies were pointed out. The communication reads as under:-

“The assessment teams has strongly mentioned in the inspection report that all the above mentioned equipments and instruments need to be installed or purchased and verified before the admission

of the batch 2014-15 otherwise extension of provisional affiliation may be withheld.

You are therefore, requested to remove the above deficiencies and send full compliance report immediately with supporting documents and others relevant papers of the deficiencies like instruments lab, so that the further necessary action may be taken accordingly.”

The appellant, thereafter, responded on 21.07.2014 (Annexure P-8) and other communications but it was on 11.09.2014 (Annexure P-16), the list of students admitted by the appellant was considered by the University and was decided to be returned. The relevant extract from the communication reads as under:-

“It is informed that the list was placed before the University authorities. The University authorities has decided to return the list as your institution has not been granted extension in Provisional affiliation for the session 2014-15. Further these students have been admitted without University Observer. Therefore, University cannot register these students as students of Pharmacy for the session 2014-15.

It is made clear here that University has already issued a circular to this effect all the Principal/Directors of the Colleges/Institutions affiliated with Pt. B.D. Sharma University of Health Sciences, Rohtak vide letter No.UHSR/R & A/A-1/13/1548-1623 dated 10-05-2013 (Copy Enclosed). That no admission should be made without getting extension in Provisional Affiliation from the University and representative of the University should be associated in admissions.”

It may be noticed that before the communication was addressed on 11.09.2014, a surprise inspection was conducted on 08.08.2014. The observations of the inspection were communicated on 13.08.2014 pointing out the following deficiencies:-

“The inspection was carried out on 08-08-2014 and the inspection team has pointed out the following deficiencies.

Principal was not found. He is not associated with the same institution from the next day of previous inspection which was on 30-06-2014.

Faculty were five in number, duly signed copy of attendance of the faculty present of the day of surprise inspection is enclosed. But during previous inspection 30-06-2014 they were 18 in No.

*During surprise inspection, two attendance register for faculty member were maintained. One attendance register for inspection purpose and the other one for daily purpose (Copies of both the registers Enclosed). In the inspection register the signature was done by single person monotonously and doesn't match with signature in the daily attendance register.

There was no improvement in all the ten labs, still they were in worse shape except computer lab where the requirement of computer (24 nos) is complied and in proper working condition. The labs need immovable concrete slabs with necessary fittings required for conducting practical classes.

In instrument room UV-Visible spectrophotometer has been installed still AC fitting and air lock systems are required for the same room.

In machine room platform for two machines (Single punch tablet making machine and coating pan machine) were made but not upto the mark. Basic machines needs to be procured and installed (mixers and blender, ball-mill, cutter mill etc.).

In microbiology lab, aseptic chamber needs to be developed. Lots of minor equipments (Bod incubator, single pan electronic balance, orbital shaker) and necessary chemical reagents glasswares are to be procured.

All the students from second year to four year undergoing this year session course were availing vacation. This will result in difficulty in completion of the prescribed number of days for academic year.

The inspection report was placed before the university authorities it has been almost same deficiencies in the both inspection dated 30-06-2014 and 08/08. Therefore, it has been decide that before granting extension in provisional affiliation your college, the deficiencies mentioned above may be removed first.

This may be treated most urgent.”

Learned Single Judge considered the respective contentions and found that the affiliation to the appellant has been

rightly declined because deficiencies found in surprise check cannot be ignored. It was found that there are two attendance registers for faculty members, one for inspection purpose and the other one for daily purpose. The signature in the inspection register was done by single person monotonously and doesn't match with signature in the daily attendance register. All the students from 2nd year to 4th year were availing vacation, meaning thereby there was not even a single student in the institute at the time of inspection. The stand of the respondent is that the inspection is always stage managed when it is carried out with the prior information, but the real truth is surfaced when there is a surprise check. In view of the observations in the surprise check, learned Single Judge did not find any arbitrariness or unreasonableness in the communication dated 11.09.2014.

Before this Court, learned counsel for the appellant relies upon an order passed by Hon'ble Supreme Court in Writ Petition (Civil) No.538 of 2014 titled Jayamatha Engineering College v. Union of India and others, on 26.06.2014 whereby at the request of AICTE, a week was granted to consider the approvals. It was also observed as under:-

“It is made clear that all the Colleges who have been cleared for intake of students for the Academic Year 2014-2015, as envisaged in the process above, shall be cleared and considered for admitting students for the current Academic Year. Learned Senior Counsel appearing for the petitioners in some of the Writ Petitions apprehends that the respondents may adhere to Annexure P-7. We think that that would not be appropriate in view of the orders contained herein.”

The said order passed by Hon'ble Supreme Court is, in fact, to modify the directions issued in the earlier orders passed by

Hon'ble Supreme Court reported as (2013) 3 SCC 385 titled Parshavanath Charitable Trust & Ors. v. All India Council for Tech. Edu. & Ors. In the said case, it has been inter alia observed that there cannot be any deemed and/or implied approval for the new site of the appellant-College. That was a case of change of site by the College without approval of AICTE. But in the present case, it is not the change of site but the affiliation by the University which the appellant has not even applied for in terms of the University Regulations.

Learned counsel for the appellant contends that University has not rejected the request of the appellant-Institute on the ground that it was not within time. That is in fact correct but even if the University has considered the request for affiliation even after the prescribed time, it will not entitle the appellant-Institute to admit students without even having provisional affiliation. The appellant cannot insist upon a time schedule from the University when the appellant is in breach of the time schedule given in the Ordinance. The appellant has admitted students without associating the University and in fact even without provisional affiliation from the University. The entire admission process suffers from illegalities and in breach of the orders of Hon'ble Supreme Court dated 26.06.2014 when it was clarified that all Colleges who have been "cleared for intake of students" shall be cleared and considered for admitting students for the current Academic Year by the University for the Academic Year 2014-15.

Since the appellant was not cleared for admission nor the appellant has met out the deficiencies noticed by the inspection team who conducted a surprise check on 08.08.2014, we do not find that the

appellant is entitled to any indulgence in the interest of students. It is the appellant who has taken students for a ride. Therefore, it will be open to the students to claim damages for admitting them without authority of law.

Consequently, the present appeal is dismissed with costs of Rs.9,00,000/-. Such cost shall be payable to 59 students at the rate of Rs.15,000/- each and the remaining amount of Rs.15,000/- to the respondent-University. The cheques drawn in favour of the students and the University shall be submitted before the Registrar (Judicial) of this Court within one month.

Such costs shall be without prejudice to the rights of the students to claim damages for wrongful admission and wasting one year of the students from the appropriate Court.

(HEMANT GUPTA)
JUDGE

APRIL 29, 2015
‘D. Gulati’/Vimal

(LISA GILL)
JUDGE