

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.02.2016.

(1)

LPA No. 1307 of 2014 (O&M)

Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak

...Appellant.

Versus

Advanced Institute of Pharmacy and others

.....Respondents.

(2)

LPA No. 1906 of 2014 (O&M)

Pharmacy council of India

.....Appellant.

Versus

Advanced Institute of Pharmacy and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

**Present: Mr. Ramesh Hooda, Advocate,
for the appellant in LPA No. 1307 of 2014 and
for respondent No. 3 in LPA No. 1906 of 2014.**

**Mr. Ashok Kumar Sharma, Advocate, for
Mr. S.K. Sharma, Advocate,
for the appellant in LPA No. 1906 of 2014 and
for respondents No. 3 to 5 in LPA No. 1307 of 2014.**

**Mr. Abhimanyu Tiwari, Advocate, for respondent No. 1 -
Advanced Institute in both LPAs.**

None for respondents No. 2 and 6 in LPA No. 1307 of 2014.

None for respondents No.2 and 4 to 6 in LPA No 1906 of 2014.

S.S. SARON, J.

This order will dispose of LPA No. 1307 of 2014 titled 'Pandit Bhagwat Dayal Sharma University of Health Sciences versus Advanced Institute of Pharmacy and others' as also LPA No. 1906 of 2014 titled 'Pharmacy Council of India versus Advanced Institute of Pharmacy and others.' Both the appeals arise out of the same judgment and order dated 05.08.2014 passed by the learned Single Judge in CWP No. 12261 of 2014.

The facts are taken primarily from LPA No.1307 of 2014 filed by the Advanced Institute of Pharmacy ('Institute' - for short) (respondent No.1). The said respondent No.1 - Institute filed a writ petition i.e. CWP No.12261 of 2014 in this Court against the appellant - Pandit Bhagwat Dayal Sharma University of Health Sciences ('Pt. B.D. Sharma University' - for short) and the Pharmacy Council of India as also the Union of India, the All India Council of Technical Education ('AICTE' - for short) and the University Grants Commission, besides, the Maharishi Dayanand University, Rohtak which was a pro forma respondent seeking quashing of the order dated 16.06.2014 by which the Pt. B.D. Sharma University declined the application of the respondent No.1 - Institute for increase in intake of students from 60 to 100 in its B.Pharmacy Course. The reasons for declining the increase in intake from 60 to 100 seats was that the respondent No.1 - Institute had submitted the application for proposal along with the prescribed fee after the last date, i.e. 31.10.2013, of the preceding year, besides, the University Grants Commission had decided to have one year moratorium for affiliation of fresh colleges providing technical education and approval of intake of students in technical colleges, i.e. the D.O. letter dated 04.04.2014 had already been circulated to all Pharmacy colleges/institutes vide letter dated 06.06.2014. Accordingly, the approval of increase in intake of seats in respondent No.1 -

Institute was declined by the impugned letter dated 06.06.2014.

The respondent No.1 - Institute imparts courses in Pharmacy and is run by Shri Bankey Bihari Educational Trust registered under the Trusts Act, 1882. The respondent No.1 - Institute is functioning since the year 2007-08 as an institute for providing B.Pharmacy Education Courses. Earlier, this Institute was affiliated to the Maharishi Dayanand University, Rohtak. The State of Haryana enacted the Pandit Bhagwat Dayal Sharma University of Health Sciences Rohtak Act, 2008, which was published in the gazette on 02.06.2008 and notified on 18.08.2008 ('2008 Act' – for short). All the colleges imparting education relating to Health Sciences, which were earlier affiliated with the Maharishi Dayanand University, Rohtak stood automatically affiliated to the Pt. B.D. Sharma University. The Pt. B.D. Sharma University on 16.07.2009 issued an Ordinance providing for the conditions of affiliation of colleges and institutions to the privileges of the University and the withdrawal of such privileges i.e. “Ordinance on the Conditions of Affiliation of Colleges and Institutions to the privileges of the University and the withdrawal of such privileges” ('Ordinance' - for short). Clause 2 (A) of the said Ordinance, inter alia, provided that the last date for submission of application/ proposal along with prescribed processing fee for new College/ Institute/ increase intake/ additional course(s)/ specialization/ subject(s) etc. without late/ extra fee shall be 31st October of the preceding year to which it is proposed to start. Clause 2 (B) provides that the proposal/ application shall 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. In terms of Clause 3 of the Ordinance, the management applying for affiliation and management whose college or institution has been granted

affiliation, were to give and comply with the undertakings as enumerated in sub-clauses (a) to (k) of Clause 3 of the Ordinance.

The controlling body for the Pt. B.D. Sharma University is the AICTE and its approval was/ is required by the respondent No.1 - Institute for running a Pharmacy Courses. The AICTE in 2013-14 published a handbook regarding the process for approval. The said handbook, inter alia, provided, on its website portal, various columns that were required to be filled by an institute seeking approval for running Pharmacy Courses. Para 3.3 of the said Approval Process Handbook 2013-14 provides for obtaining views of the State Government and the affiliating University. Para 3.4 thereof envisages that the State Government/ UT and the affiliating University/ Board will forward to the concerned Regional Office of the Council, i.e. the AICTE, their views on the application received with valid reasons or otherwise within a period of fifteen days from the date of receipt of the application. Para 3.5 thereof provides that the views of the State Government/ UT and the affiliating University/ Board will be taken into account by the Regional Committee/ Regional Sub-committee while taking the decision whether the application is to be processed further or not. In the absence of receipt of views from the State Government/ UT and/or the affiliating University/ Board, it is provided that the Council i.e. AICTE will proceed for completion of approval process.

The respondent No.1 - Institute intended to increase the intake of seats in its institution from 60 to 120 for its B.Pharmacy Course the academic session 2014-15. Therefore, for the said purpose of increase in intake of seats it submitted its application to the AICTE which was to grant approval on 04.06.2014. According to the appellant - Pt. B.D. Sharma University, its

application should have been submitted by 31.10.2013 i.e. the last date during the previous year as provided for by Clause 2 (A) of its Ordinance. The application of respondent No.1 - Institute according to the appellant - Pt. B.D. Sharma University was, therefore, after the last date and even after the date of submitting the application on payment of extra/ late fees.

The justification given for the delay in submitting the application by the respondent No.1 - Institute was that the position with regard to particular body/ authority for seeking approval for the increase in intake of seats was changed from the AICTE to the University Grants Commission in view of the Supreme Court judgment in the case; Association of Management of Private Colleges v. All India Council for Technical Education and others, (2013) 8 SCC 271, decided on 25.04.2013. The Supreme Court, in the said case, considered the role of inspection and regulatory powers of the AICTE vis-a-vis Universities and their constituent and affiliated Colleges including private and unaided Colleges. It was held that the AICTE has got no control and supervision upon affiliated Colleges of the respective Universities. The role of the AICTE was held to be only advisory and recommendatory in the sense that the AICTE could set standards of technical education and if there was non-compliance therewith, it could bring the same to the notice of the University Grants Commission. The AICTE, it was held, could not by itself issue and enforce sanctions against the Universities by itself except submitting a report to the University Grants Commission for appropriate action. The control over affiliated colleges, it was held, vested with the University and not with the AICTE. The role of inspection etc. in terms of Sections 10 to 12 of the All India Council of Technical Education Act, 1987 ('AICTE Act' - for short) conferred on the AICTE vis-a-vis

Universities was limited for the purpose of ensuring proper maintenance of norms and standards in technical education system so as to ensure compliance with standards laid down by it with no further or direct control over such Universities or scope for any direct action except bringing it to the notice of the University Grants Commission. The Universities, its Colleges, constitute institutions and units including Colleges did not require prior approval from AICTE for running technical courses. It was observed as follows:-

“Therefore, it has clearly laid down the principle that the role of the AICTE Act is only advisory in nature and is confined to submitting report or giving suggestions to University Grants Commission for the purpose of implementing its suggestions to maintain good standards in technical education in terms of definition under Section 2 (h) of the AICTE Act and to see that there shall be uniform education standard throughout the country to be maintained which is the laudable object of the AICTE Act for which it is enacted by Parliament. The provisions of the AICTE Act shall be implemented through University Grants Commission as the Universities and its affiliated Colleges are all governed by the provisions of the said Act under Section 12-A of the University Grants Commission Act, 1956 read with the Rules and Regulations that will be framed by the University Grants Commission in exercise of its power under Sections 25 and 26 of the said Act.”

In view of the said decision in the case of Association of

Management of Private Colleges v. All India Council for Technical Education and others (supra), the procedure for seeking affiliation and increase in intake of students stood transferred from the AICTE to the University Grants Commission.

The Ministry of Human Resources Development, Govt. of India issued a letter dated 04.04.2014 addressed to the Vice Chancellors of all Universities and also for uploading on the website of the University Grants Commission. The said letter dated 04.04.2014 was in continuation of earlier communication vide D.O. dated 07.08.2013 of the University Grants Commission and in view of the pattern of enrollment in colleges providing technical education viz-a-viz the approved intake capacity thereof over the last couple of years (data collected from AICTE), it was mentioned that it had been decided to have a one year moratorium on:- (a) affiliation of fresh colleges providing technical education by Universities; and (b) approval of increase in the intake of students in technical colleges. Accordingly, all affiliating Universities were instructed that they shall neither invite nor process any application from Colleges providing technical education for the academic year 2014-15. However, applications with regard to purposes other than the ones mentioned, it was provided, may be considered in accordance with the University Grants Commission (Affiliation of Colleges Offering Technical Education by Universities) Regulations, 2014.

The University Grants Commission then addressed a letter dated 27.05.2013 to Vice Chancellor of All 566 Universities mentioning that in view of the Supreme Court judgment in Association of Management of Private Colleges v. All India Council for Technical Education and Others (supra) it had become imperative for the Universities and the University Grants Commission to evolve

a suitable methodology to ensure that existing technical/ engineering colleges affiliated to the Universities do not dilute standards of technical education imparted by them. It was mentioned to be of utmost importance that the Universities having power of affiliation exercise due care and diligence while granting permanent affiliation or affiliation to new technical colleges. Any dilution of standards of technical education at this juncture would also belie the trust reposed by the Hon'ble Supreme Court on the sanctity of autonomy of Universities. The University Grants Commission, in the meantime, was working on preparing suitable guidelines/ regulations for ensuring standards of teaching and learning in affiliated colleges offering courses/ programs of professional and technical nature. In view of the above, it was requested to ensure that no further affiliations were granted to any more affiliated colleges offering courses/ programs of professional and technical nature till the University Grants Commission reaches out to them again.

The Supreme Court, in the meanwhile in the case of Orissa Technical Colleges Association v. AICTE and another', Special Leave to Appeal (Civil) No. 7277 of 2014, on 17.04.2014, passed the following interim order:-

“In the counter affidavit filed on behalf of respondent No. 1, i.e., All India Council for Technical Education (AICTE), it is stated that Approval Process Handbook (2013-14) is presently in force and the same has been extended and made applicable for the Academic Year 2014-15 as well. AICTE shall now proceed in accordance with the Approval Process Handbook for the Academic Year 2014-15 insofar as (sic.- as) the members of the petitioner Association and all colleges and

institutions situated similarly to the members of the petitioner Association are concerned and necessary orders shall be issued by AICTE within ten days.

Prayer for interim relief is ordered accordingly.”

The above order was followed by another interim order passed by a Bench of four Hon'ble Judges on 09.05.2014, which reads as follows:-

“The order dated 17.4.2014 passed by this Court is clarified and it is directed that prior approval of All India Council for Technical Education (AICTE) is compulsory and mandatory for conduct of a technical course including the MBA/ Management Course by an existing affiliated Technical College and also new Technical College which will require affiliation by a University for conduct of its Technical Courses/ Programmes for the academic year 2014-15.

The Time given in the order dated 17.4.2014 is extended by 10.6.2014.”

In terms of the above orders, the approval of the AICTE was made compulsory and mandatory for conduct of technical courses including MBA/ Management Courses by an existing affiliated technical college and also new technical college which would require affiliation by an University for conduct of its technical courses/ programmes for the academic year 2014-15. The time given in the order dated 17.04.2014 was extended till 10.06.2014.

The Pharmacy Council of India during this time on 13.05.2014 granted necessary approval in terms of Section 12 of the Pharmacy Act, 1948 to the respondent No.1 - Institute for conducting Pharmacy Course for 60 seats.

This approval was valid till 2017. In view of the Supreme Court order dated 09.05.2014, the respondent No.1 - Institute submitted a letter dated 15.05.2014 to the Regional Officer, AICTE, North-Western Regional Office, Chandigarh with copies to the Director General, Technical Education, Haryana, Panchkula and the Registrar, Pt. B.D. Sharma University seeking approval towards extension M.Pharmacy (DRA) and B.Pharmacy Course. It was mentioned that the Institute had also applied for increase intake in B.Pharmacy Course from 60 to 120 seats in their Institution. It had already submitted the application on web-portal along with fee of Rs.2.00 lacs. A hard copy of the application, which had already been submitted on the web-portal, along with all required documents as per appendix 18 were enclosed. It was hoped that the enclosed documents would be found in order. However, the respondent No.1 - Institute while filling the form, as downloaded from the website of the AICTE portal, by mistake and inadvertently mentioned that it was affiliated to the Maharishi Dayanand University, Rohtak, whereas it should have been mentioned as Pt. B.D. Sharma University. This mistake that was committed has been taken by the appellant - Pt. B.D. Sharma University as a ground to say that no application for necessary approval was submitted by the respondent No.1 - Institute to the Pt. B.D. Sharma University for increase intake in B.Pharmacy Courses from 60 to 120 seats. In fact copy of letter dated 15.05.2014 was addressed by respondent No.1 - Institute to the Regional Officer of AICTE at Chandigarh and copy was also given to the Registrar, Pt. B.D. Sharma University as also to the Director General, Technical Education, Haryana, Panchkula. In view of the said discrepancy, the Pt. B.D. Sharma University did not take any action or cognizance of the letter submitted by the respondent No.1 - Institute, as in the application form it was submitted

that it was affiliated to the Maharishi Dayanand University, Rohtak.

The AICTE, however, vide letter dated 04.06.2014 granted necessary approval for the increase in intake of seats for the under-graduate pharmacy course from 60 to 120. The respondent No.1 - Institute accordingly addressed a letter dated 04.06.2014 to the Registrar, Pt. B.D. Sharma University mentioning that they had applied to AICTE for increase in intake from 60 seats to 120 seats in B.Pharmacy Course at its institution. It was mentioned that the AICTE had approved the increase in intake from 60 seats to 120 seats in B.Pharmacy Course vide letter dated 4.6.2014, a copy of which was enclosed. It was requested to accord necessary approval for the increase in intake from 60 seats to 100 seats as per the Pharmacy Council of India Regulations for B.Pharmacy Course to the respondent No.1 - Institute at the earliest. A demand draft of Rs.25,000/- in favour of the Controller of Finance, Pt. B.D. Sharma University was also submitted. It was further mentioned that the respondent No.1 - Institute had already submitted request on prescribed proforma (SIF B-1) to the Pharmacy Council of India for the increase in intake from 60 to 100 seats as per Pharmacy Council of India Regulations in B.Pharmacy Course at respondent No.1 - Institute vide letter dated 26.05.2014, a copy of which was enclosed.

The Pharmacy Council of India addressed a letter dated 09.06.2014 to the Principal of respondent No.1 - Institute regarding increase in the intake of B.Pharmacy Course. In the said connection it was intimated that respondent No.1 - Institute was approved upto 2016-2017 academic sessions for intake of 60 students only. Further for increasing raise in admissions, an inspection would be conducted by the Pharmacy Council and decision arrived at would be

communicated accordingly. In the meantime, the respondent No.1 - Institute was advised to restrict admissions to sanction intake of 60 only failing which the excess students would not be eligible for registration as Pharmacist to practice the profession and the entire consequences thereof shall rest on the respondent No.1 - Institute and the Pharmacy Council of India in no way would be responsible for the same.

The request of respondent No.1 - Institute for increase in intake of seats was declined by the appellant - Pt. B.D. Sharma University vide impugned letter dated 16.06.2014. It was mentioned that the request of the respondent No.1 - Institute for increase in intake from 60 to 100 seats in B.Pharmacy Course was placed before the University authorities but the same could not be accepted as the same was not covered under the provisions of the University Ordinance. The relevant clauses of which were reproduced as follows:-

“1. As per Clause 2 (A) and (B) of the Ordinance regarding conditions of affiliations of the Colleges and Institutions to the privileges of the University and the withdrawal of such privileges (A) the last date for submission of application proposal along with prescribed fee for new College/Institution increase/ intake/addition at course(s) etc. without late/extn. fee shall be 31st Oct of the preceding year to which it is proposed to staff.

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

(II) The University Grants Commission has decided to have a one year moratorium (a) affiliates of fresh College providing technical education by Universities and (b) approval of increase in the intake of students in technical Colleges (the D.O. Letter No. F 14-9/2013 (CPP-11) dated 04 April, 2014 has already been circulated to all Pharmacy Colleges/Institute vide this office letter No. UHSR/R&A/C-1/Gen/AICTE/1840-64 dt. 06/06/2014.”

It is the said letter dated 16.06.2014 of the appellant - Pt. B.D. Sharma University that was assailed by respondent No.1 - Institute.

The learned Single Judge considered the matter and the contentions raised by the appellant - Pt. B.D. Sharma University that the respondent No.1 - Institute had actually secured NOC from Maharishi Dayanand University as was indicated in the letter of the AICTE. The said contentions of the appellant - Pt. B.D. Sharma University were rejected as an error of what it stated. It was held that the respondent No.1 - Institute was admittedly affiliated only with the Pt. B.D. Sharma University and the Maharishi Dayanand University itself was defunct (sic. - not connected). It was further held that if the respondent No.1 - Institute was seeking its affiliation, it was doing so on the basis of the power recognized with the AICTE as the competent authority to grant approval and if there was a justification for entertaining the application even beyond 31.12.2013, it was to be seen in the context of the stated position that the UGC had imposed a moratorium and the approval of respondent No.1 - Institute had come through due to the changed position of the AICTE, as the only competent body to grant such approval. If there was a delay, it was not a delay in violation of the

Supreme Court's order, but it was a delay approved in a sense by the Supreme Court's judgment/ order itself granting extension of time for seeking approval with the AICTE up to June, 2014.

The two objections taken for denial of the increase in intake for the respondent No.1 – Institute/ College were also held to be not tenable in the light of Supreme Court orders and the approval granted by the AICTE. The impugned order dated 16.06.2014 issued by the appellant - Pt. B.D. Sharma University was quashed and a direction was issued to the Pt. B.D. Sharma University to grant approval and for Pharmacy Council to follow suit and secure to respondent No.1 - Institute its right to obtain an increase in intake from 60 to 120 students. The writ petition was accordingly allowed and the directions were issued as sought for. The learned Single Judge, on being informed also noticed that the admission to technical institutes were to begin not later than 15th August, 2014. As such the necessary approvals were ordered to be issued before the said date to enable the respondent No.1 - Institute to carry with the programme of admissions.

Thereafter, CM No. 9828 of 2014 was filed by the respondent No.1 - Institute seeking clarification that the Court had directed the approval to be issued before 15.08.2014 so that the respondent No.1 - Institute was able to admit students. The said CM was disposed of with the following order:-

“The clarification sought is that this Court has directed the approval to be issued before 15.08.2014 so that the institute is able to admit students. The grievance is that the respondents have not issued such a permission and the University has not granted the approval for the Pharmacy Council to follow suit and hence, the order that was passed

on 05.08.2014 itself is likely to be rendered infructuous.

I clarify that the permission which I have directed is only to ensure that the process of admission is not stifled. The students can be provisionally admitted but it shall be clearly stated in the admission order that the students are admitted only subject to the final outcome of the writ petition and any other proceedings that may be pursued against the said decision in CWP No.12251 of 2014.

Learned counsel for the respondent states that the application itself had been only for 100 seats and the Court has granted an order for 120 seats. Although no specific application has been filed by the respondent to make any modification at the time when the clarification is issued, I only take it as appropriate that the reference to 120 seats shall be taken as 100 seats and the provisional admission shall be only for 100 persons. I have the consent of the counsel appearing on behalf of the petitioner as well that it can be reduced to 100 seats instead of 120 as originally ordered.

The application is disposed of as above.”

The learned Single Judge, therefore, clarified that the permission by which direction had been issued was only to ensure that the process of admission was not stifled. The students, it was held, could be provisionally admitted but it was to be clearly stated in the admission order that the students were admitted only subject to the final outcome of the writ petition and any other proceedings that may be pursued against the said decision in CWP No. 12261 of 2014. In fact

the learned counsel appearing for the respondent No.1 - Institute submitted that the application itself had been only for 100 seats, but the Court had directed for 120 seats. It was observed that although no specific application had been filed to make any modification at the time when clarification was issued, however, it was taken to be appropriate that the reference to 120 seats shall be taken as 100 seats and provisional admission shall be only for 100 persons. Therefore, the learned Single Judge validated the increase in intake of seats from 60 to 100 for the academic session 2014-15 for the B.Pharmacy Course of respondent No.1 - Institute.

Learned counsel appearing for the appellant - Pt. B.D. Sharma University has contended that there has been a violation of the University's time schedule that has been fixed by the 2008 Act; however, he has not been able to seriously dispute that the difficulty came about only in view of the Supreme Court's judgment in the case of Association of Management of Private Colleges v. All India Council for Technical Education and others (supra) and the subsequent interim orders passed on 17.04.2014 and 09.05.2014, as noticed above. In fact, the Supreme Court itself in the case of Varun Saini v. Guru Gobind Singh Indraprastha University, (2014) 16 SCC 330, observed as follows:-

“First, we shall dwell upon the courses that are regulated by the 1987 Act and the 1994 Regulations. It is submitted by the learned counsel for the petitioners, namely, the institutions and the students, that AICTE did not adhere to the schedule as far as the counselling is concerned and the University played possum with the schedule and further created a chaos by allowing the students who had already taken admissions in

certain institutions to participate in the supplementary counselling which is impermissible on the fact of the prospectus issued by the University. Mr. Rohatgi, learned Attorney General would submit that AICTE, after the pronouncement of the judgment in Assn. Of Management of Private Colleges case was uncertain of its jurisdiction/ authority till it was conferred the power although by an interim order on 9.5.2014 in Orissa Technical Colleges Assn. Case, and that uncertainty caused delay. We have been apprised that the matter is pending before a three-Judge Bench and AICTE has proceeded solely on the basis of the interim order. As far as the issuance of the notification in respect of ten courses having access to all candidates including the students who had already taken admission, the learned Attorney General submitted, that such inclusion was contrary to the prospectus and also erroneous on many a score.

Let it be clearly stated that we appreciate that for the academic year 2014-15, there were certain unforeseen circumstances.

First, a question mark was put on the authority of AICTE, second, there was bifurcation of the State of Andhra Pradesh to two States, namely, State of Andhra Pradesh and State of Telangana, and third, number of seats had remained vacant despite students having qualified and desirous of taking of the courses.” (Emphasis added).

Therefore, the Supreme Court itself noticed that initially a question

mark was put on the authority of AICTE, besides, there was a bifurcation of the State of Andhra Pradesh to two States, namely, State of Andhra Pradesh and State of Telangana, and a number of seats had remained vacant despite students having qualified and being desirous of taking of the courses.

In the present case, first of the unforeseen circumstances it is found is that there was indeed a question mark put on the authority of AICTE for the grant of approval for the increase in intake of seats from 60 to 100 in respect of respondent No.1 - Institute. The other discrepancy pointed out by the appellant - Pt. B.D. Sharma that the respondent No.1 - Institute had mentioned its affiliating University as the Maharishi Dayanand University is of no significance as it was only an error and the only University with which it is affiliated is the Pt. B.D. Sharma University. The learned Single Judge has in fact rightly held the same to be only an error. Even otherwise a copy of the letter dated 15.05.2014 seeking approval for Extension of Approval and Increase in Intake for the respondent No.1 - Institute was submitted to the Pt. B.D. Sharma University. Therefore, the said University was well aware and apprised of the fact that the respondent No.1 - Institute had applied for and sought approval for the increase in intake of seats in its B.Pharmacy course from 60 to 120 and it cannot feign ignorance of the same.

Learned counsel appearing for the appellant - Pharmacy Council of India in LPA No.1906 of 2014 has contended that the Supreme Court in the case of Parshvanath Charitable Trust and others v. All India Council for Technical Education and others, (2013) 3 SCC 385, has provided a time schedule and the Pharmacy Council of India has framed a time schedule for all the institutions affiliated to it for consideration for approval under the Pharmacy Act for the

purpose of registration of a pharmacist. The said time schedule has been provided for vide circular dated 02.05.2013 and is available on the website of the appellant - Pharmacy Council. The time schedule is as follows:

Sr. No.	Event	Schedule
1	Submission of application in Standard Inspection Form (SIF) – (a) for new institutions/new courses/ increase in intake, SIF in triplicate is to be submitted in hard copy. (b) for existing institutions already approved – for conduct of course. Or u/S 12 of the Pharmacy Act.	1 st to 31 st August of the previous year (for example, if the approval is sought from 2014-2015 academic session application shall be submitted between 1 st to 31 st August, 2013).

The above time schedule was to be effective for submission of application in a Standard Inspection Form for new institutions/new courses/ increase in intake. The Standard Inspection Form, in triplicate, was to be submitted in hard copy between 1st to 31st August of the previous year. The above time schedule it is submitted has not been adhered to.

We find not much substance in the submissions of the learned Counsel for the appellant - Pharmacy Council of India that the time schedule for admissions was to commence from 1st August, 2014 for the academic session 2014-15.

As already noticed, there had indeed been unforeseen circumstances as regards the authority before which the form was to be submitted, i.e. whether the form for the increase in intake of seats was to be submitted before the AICTE or the University Grants Commission or both. Initially, the Supreme Court, as already noticed, in its decision in the case of Association of Management of Private Colleges v. All India Council for Technical Education and others (supra) held that the exercise for granting approval for running a course is to be granted by the University Grants Commission. The University Grants Commission in

turn kept the process on hold so as to frame necessary regulations and passed an order for maintaining a moratorium for one year. This position was changed by the Supreme Court subsequently by its interim orders dated 17.04.2014 and 09.05.2014, which are noticed above. Therefore, in the peculiar facts and circumstances of the case, adherence to the time schedule was not possible. Besides, it is to be noticed that the appellant - Pharmacy Council of India vide its letter dated 09.06.2014 regarding increase in intake for B.Pharmacy Course did not mention anything regarding adherence to the time schedule fixed by it. It is merely mentioned that the respondent No.1 - Institute was approved upto 2016 - 2017 academic session for an intake of 60 students only. It is further mentioned that considering raise in admissions, an inspection would be conducted by the Pharmacy Council and decision arrived at would be communicated accordingly. In the meantime, the respondent No.1 - Institute was advised to restrict admissions to sanction intake of 60 only. There is no mention of the time schedule not being adhered to.

It is admitted case of the parties that 100 students have taken admission in B.Pharmacy Course during the academic session 2014-15 and they have completed their first year; besides, it may also be noticed that the Pharmacy Council of India itself has now granted all the necessary permission to the respondent No.1 - Institute to run the courses vide its letter dated 21.06.2015. The minutes of 01.097th meeting of the Central Council of the Pharmacy Council of India held on 20/21.06.2015 have been placed on record. Item No. 579 of the said meeting relates to the respondent No.1 - Institute in which the admissions limit has been raised from 60 to 100 for the academic session 2015-16 subject to submission of consent of affiliation of Examining Authority i.e. Pt. B.D. Sharma

University. Therefore, it would be inequitable to say that the respondent No.1 - Institute did not have the necessary infrastructure of capacity to increase in intake of admissions of students from 60 to 100 for the academic session 2014-15. In fact the Pt. B.D. Sharma University has only raised the contention that respondent No.1 - Institute applied for increase in intake of seats after the time schedule and that it wrongly mentioned that it was affiliated to Maharishi Dayanand University instead of Pt. B.D. Sharma University. Both these aspects have been duly considered. The delay as already noticed was due to unforeseen circumstances and the mentioning of Maharishi Dayanand University as the affiliating University was only a mistake for which the students who are now studying are not liable to suffer when all other conditions stand fulfilled. The competent authority i.e. the AICTE having granted necessary approval for increase in intake of students is not to be denuded on mere technicalities and the fact that the approval has been given, it would subserve the cause of justice that the respondent No.1 - Institute is allowed to run with the increase of seats.

In the circumstances, we find no infirmity with the order dated 05.08.2014 passed by the learned Single Judge and both the appeals are accordingly dismissed. There shall, however, be no order as to costs.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

10.02.2016
Ramesh/amit

Note : Whether to be referred to reporter: Yes