

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10027 OF 2016

Shri Bhairavnath Nisarga Mandal's
College of Pharmacy (D. Pharm.)
At Post Hatta, Tq. Vasmat,
Dist. Hingoli,
Through its Principal

.. Petitioner

Versus

01. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
and Employment Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
02. The Director of Technical Education,
Government of Maharashtra,
3, Mahapalika Marg, Mumbai 400 001.
03. All India Council for Technical Education,
07th Floor, Chandralok Building,
Janpath, NEW DELHI - 110 001,
Through its Principal Secretary.
04. The Pharmacy Council of India,
Through its Registrar-Cum-Secretary,
Combined Council Building,
Kotla Road, Ali Yawarjung Marg,
NEW DELHI - 110 002.
05. The Maharashtra State Board of Technical
Education, Kherwadi, Bandra (East),

Mumbai - 400 051,
Through its Secretary.

.. Respondents

Shri D. S. Bagul, Advocate for the Petitioner.
Shri V. S. Badakh, A.G.P. for Respondent Nos. 1 and 2.
Shri S. V. Adwant, Advocate for the Respondent No. 3.
Shri S. B. Deshpande, Standing Counsel for the respondent No. 4.
Shri S. S. Jadhavar, Advocate for the Respondent No. 5.

WITH
WRIT PETITION NO. 2631 OF 2017

1. Ms. Gayatri Tukaram Kakde,
Age : 21 Years, Occu. : Occ.
R/o T. V. Venter Hudco,
Swami Vivekanand Nagar,
Aurangabad.
2. Pandhari Dnyaneshwar Raut,
Age : 22 Years, Occu. : Student,
R/o Jai Bhawani Nagar,
Galli No. 14, Right Side Building No. 3,
Mukundwadi Railway Station,
Aurangabad.
3. Krushna Sukhdev Adhane,
Age : 20 Years Occu. : Student,
R/o N/12, 28/6, Bharat Nagar,
Aurangabad.
4. Dnyaneshwar Kakasaheb Bhalekar,
Age : 21 Years, Occu. : Student,
R/o Tongaon, Post Kumbephal,
Tq. and district Aurangabad.
5. Shiva Trust's
Rajesh Bhaiyya Tope College of Pharmacy

At Nipani Bhalgaon, Beed By pass
Road Aurangabad, District Aurangabad
Through its Principal
Mr. Uday Uttamrao Dunakhe
Age : 42 Years, Occu. : Service,
R/o A-4, Hari Sai Park,
Behind Chate School,
Satara Parisar, Aurangabad,
District Aurangabad.

.. Petitioners

Versus

1. The Pharmacy Council of India,
Combined Council's Building,
Kotla Road, Temple lane, near I.T.O.,
New Delhi.
Through its Registrar.
2. The Maharashtra State Pharmacy Council
E.S.I.S. Hospital compound,
Lal Bahadur Shastri Marg,
Mulund (W), Mumbai
Through its Registrar.
3. All India Council for Technical Education,
07th Floor, Chandralok Building,
Janpath, New Delhi,
Through its Member Secretary. .. Respondents

Shri V. D. Hon, Senior Counsel i/by Shri Ashwin V. Hon,
Advocate for Petitioners.

Shri S. B. Deshpande, Standing Counsel for the respondent No. 1.

Shri V. S. Badakh, A.G.P. for the Respondent No. 2.

Shri S. V. Adwant, Advocate for the Respondent No. 3.

WITH
WRIT PETITION NO. 2642 OF 2017

1. Pritesh Balasaheb Kale,
Age : 21 Years, Occu. : Education,
R/o At Post Imampur, Tq. Newasa,
Dist.- Ahmednagar.
2. Kum. Yogita Ashok Waghchoure,
Age : 21 Years, Occu. : Education,
R/o At post-Pachegaon, Tq. - Newasa,
Dist.- Ahmednagar.
3. Akshta Popatrao Jagtap,
Age - 21 Years Occu. : Education,
R/o At post - Nimbhari,
Tq. Newasa, Dist.- Ahmednagar.
4. Sudarshan Ashok Mule,
Age - 21 Years, Occu. : Education,
R/o - At Post - Ashvi (Bk),
Tq. Sangamner, Dist. Ahmednagar.
5. Shiva Trust's
Pratibhatai Pawar College of Pharmacy
At Wadala-Mahadev Tq.-Shrirampur,
Dist.-Ahmednagar,
Through its Administrative Officer,
Dr. Shantanu Rangnath Pawar,
Age : 30 Years, Occu. : Service,
R/o Plot No. 20, Indraprastha Housing
Society, Garkheda Area, Aurangabad,
District Aurangabad. .. Petitioners

Versus

1. The Pharmacy Council of India,
Combined Council's Building,
Kotla Road, Temple lane, near I.T.O.,
New Delhi.

Through its Registrar.

2. The Maharashtra State Pharmacy Council
E.S.I.S. Hospital compound,
Lal Bahadur Shastri Marg,
Mulund (W), Mumbai
Through its Registrar.
3. All India Council for Technical Education,
07th Floor, Chandralok Building,
Janpath, New Delhi,
Through its Member Secretary. .. Respondents

Shri V. D. Hon, Senior Counsel i/by Shri Ashwin V. Hon,
Advocate for Petitioners.

Shri S. B. Deshpande, Standing Counsel for the respondent No. 1.

Shri V. S. Badakh, A.G.P. for the Respondent No. 2.

Shri S. V. Adwant, Advocate for the Respondent No. 3.

WITH
WRIT PETITION NO. 2999 OF 2017

1. Avinash S/o Raosaheb Pawar,
Age : 24 Years, Occu. : Nil,
R/o Dahigaon, Tal. Jafrabad,
District Jalna.
2. Nitin S/o Sundarrao Kulkarni,
Age : 24 Years, Occu. : Nil,
R/o Ambhora (J), Tal. Mantha,
District Jalna.
3. Anita D/o Kamlaji Jadhav,
Age - 23 Years Occu. : Nil,
R/o Devulgaon Raja,
Tq. Devulgaon Raja, Dist. Jalna.

4. Dnyaneshwar S/o Punjaram Zore,
Age 32 Years, Occu. : Nil,
R/o - Paradgaon, Tal, Ghansavangi,
District Jalna.
 5. Shriram S/o Dattarao Gore,
Age 23 Years, Occu. : Nil,
R/o - Hisoda, Tal, Bhokardan,
District Jalna.
 6. Kishor S/o Uttamrao Jadhav,
Age 28 Years, Occu. : Nil,
R/o - Jalna, Tal. & Dist. Jalna.
 7. Sabir Khan Samsheer Khan Pathan,
Age 24 Years, Occu. : Nil,
R/o - Sevali, Tal. & Dist. Jalna.
 8. Nadim Shaikh Zainullawaddin Shaikh,
Age 24 Years, Occu. : Nil,
R/o Ambad, Tal. Ambad,
District Jalna.
- .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.
2. Pharmacy Council of India,
Combined Councils Building,
Kotla Road, Aicon-E, Galib Marg,
New Delhi.
3. Maharashtra State Pharmacy Council
22, Veena Nagar, Mulund West,
Mumbai, Maharashtra.

4. Maharashtra State Board of Technical Education, 49, Ali Yawar Jang Marg, Sadguru Colony, Bandra (East), Mumbai.
5. The Director of Technical Education, Maharashtra State, 3 Mahapalika Marg, Post Box No. 1967, Mumbai.
6. Regional Board of Technical Education (RBTE) Osmanpura, Aurangabad, District Aurangabad.
7. Shree Pharmacy College, Jalna, Samata Bhavan, Dhorga Road, Jalna, Tal. & District Jalna. .. Respondents

Shri Vishal A. Bagal, Advocate for Petitioners.

Shri V. S. Badakh, A.G.P. for Respondent Nos. 1 and 5.

Shri S. B. Deshpande, Standing Counsel for the respondent No. 2.

Shri S. S. Jadhavar, Advocate for the Respondent No. 6.

Shri Y. B. Bolkar, Advocate for the Respondent No. 7.

**CORAM : ANOOP V. MOHTA AND
SUNIL K. KOTWAL, JJ.**

DATE : 04 TH JULY, 2017.

ORAL JUDGMENT (*Per Anoop V. Mohta, J.*) :-

. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for parties.

2. As common issues are raised in all these petitions and respondents are also common, so also the basic provisions of law,

therefore, this common judgment.

3. Some of petitioners are educational institutions who have been imparting technical education based upon requisite permission/approval obtained from All India Council of Technical Education (for short "AICTE").

4. The term "Technical Education" includes pharmacy, architecture and all other technical courses. Some of petitioners are students who have based upon then advertisement applied and accordingly got the admission in the institutions for pharmacy course. They have prosecuted the course accordingly, subject to and in pursuance to various orders passed by this Court in respective petitions, also in view of pending issue about supremacy of AICTE and/or PCI and/or Architecture Council. Admittedly, this controversy/issue is still pending in the Supreme Court as read and referred by this Court in Writ Petition No. 6259 of 2017 (**Shri Vile Parle Kelvani Mandal Vs. The State of Maharashtra and others**). Relevant portion is reproduced as under :

The judgments cited by the learned counsel appearing for the petitioner here directly deal with the importance / need to be given to the supremacy of the approval and sanction of AICTE over the other

authorities. We have taken note of the same and granted the relief to the other petitioners, but again also on the foundation of giving importance to AICTE approval and sanction first.

5. In view of above background, we have to consider the respective prayers made by petitioners/students seeking mandamus/order against respondent/PCI to issue necessary approval for registration as required U/Sec. 12 of the Pharmacy Act (for short 'Act') for all the students who have completed their diploma courses/ some have obtained in the year 2006-2007 onwards. The consequential prayers are made against the respondent/Maharashtra State Pharmacy Council to grant necessary approval for registration to such students irrespective pendency of the issue of intake capacity 60 and/or 120 and/or 180 as the case may be. The same was on the foundation of AICTE approval/permission along with other necessary permissions of the other authorities.

6. We have already noted in Writ Petition No. 6259 of 2017 (**Shri Vile Parle Kelvani Mandal Vs. The State of Maharashtra and others**) (supra), and similar other matters. the observations of the Supreme Court and the approval/permissions granted by the AICTE. This Court has also passed various orders granting permission to the

educational institutions/colleges to admit students based upon approval granted by the AICTE referring to intake capacity of the students. All the concerned authorities and students have acted accordingly.

7. Petitioners are waiting for registration from PCI inspite of repeated communications and orders passed by the Court. Respondent/PCI is refusing such registration. We see, there is no reason that such students who have completed the course/studied as recorded above and obtained concerned diploma should not be permitted to proceed further in life.

8. The power of pharmacy council to grant registration and refuse registration is not in dispute. At the same stroke pharmacy council is under obligation to register or grant registration once the students have completed/obtained their requisite diploma/degree/certificate from the recognized university/board. There is no question of denying the same, once they are qualified and eligible to get registration under the provisions of the Act and regulations made thereunder.

9. After going through the affidavit filed by the PCI and so also the requisite provisions of the Act and regulations so read and referred by learned counsel appearing for parties, we are inclined to observe that, the power of PCI not to grant

registration in the above background is unjustifiable, unjust and impermissible. This is basically for the reason that, various orders have been passed by this Court after hearing parties and directed the respective authorities to permit/admit the students having respective intake capacity, based upon the approval/permission granted by the AICTE. Therefore, at this stage, supremacy of AICTE, though pending in the Supreme Court, that just cannot be the reason not to consider the cases of respective institutions/students. These students are affected parties and not the institutions or any one else. The Supreme Court, as well as, High Courts' orders, in our view, at this stage ought to have been respected by the PCI. There is no challenge to approval granted by the AICTE raised by the PCI and/or such council. The respective orders passed by the High Courts as well as Supreme Court, therefore, binds all the concerned. There is no reason to deny the registration, as this position is irreversible so far as students are concerned. Their future career cannot be halted by the PCI for want of registration which is pending long.

10. The students, who have completed the course and waiting since 2009 onwards, cannot be denied their right to proceed/pursue their profession and/or business for want of such registration. Ultimately, final order by Supreme Court will required to be followed by all the concerned, as and when occasion comes. The Supreme Court may pass appropriate

equitable order in view of facts and law so referred above.

11. Additional factor in the present case is that in Writ Petition No. 9093 of 2015 (**Avinash Pawar and others Vs. The State of Maharashtra and others**) this Court on 24.08.2016 while allowing the writ petition has recorded as under :

The petitioners may submit their fresh proposal with the respondent nos.2 and 3 seeking registration as Pharmacists. On receipt of the said proposal, the concerned respondents shall process the same and take decision on it on its own merits in accordance with law and policy and shall not reject it on the ground of intake capacity of the respondent no.7. Writ petition is accordingly disposed of. Rule is made absolute accordingly. No costs.

12. The petitioners in Writ Petition No. 9093 of 2015 (**Avinash Pawar and others Vs. The State of Maharashtra and others**) (supra) are still required to file fresh Writ Petition No. 2999 of 2017 on 25.08.2016, as instead of above orders, respondent/PCI refused to accept proposal of petitioners and refused to grant registration as pharmacists within stipulated period. The institution is closed for various reasons, the students have moved this petition and submitted applications/proposals

for registration, but the respondent/PCI again refused to grant approval U/Sec. 12 of the Act. This is one of those cases, where situation is irreversible and ultimately sufferers are students and not the institution.

13. Therefore, in the interest of justice, without further delay and to avoid further complications in the matter, we are inclined to pass order. However, it is made clear that, this judgment will be subject to final decision of the Supreme Court covering the aspect of supremacy so referred above. All the concerned shall take note of this rider and pass appropriate order and/or grant registration, without waiting for technical formalities, as early as possible and preferably within a period of two (02) months.

14. It is made clear that, the respondent/PCI to deal with the applications, if already filed and if not filed, the petitioners/students shall file fresh proposals/applications within 15 days from today and deposit the requisite fees along with the applications/proposals, if necessary. In view of above, we pass following order.

O R D E R

A. The respondent/Pharmacy Council of India/Maharashtra Pharmacy Council and its agents are directed to grant registration to petitioners/students as a pharmacists in

accordance with law, as early as possible and preferably within a period of two (02) months from the completion of all formalities by the petitioners/students.

- B. The petitioners/students to comply with all the formalities including payment of fees and take necessary steps to get appropriate registration from the Pharmacy Council of India at the earliest.
- C. This order is subject to final order of the Supreme Court.
- D. Rule is made absolute accordingly in above terms. No costs.
- E. Parties to act on the basis of authenticate copy.

Sd/-
[SUNIL K. KOTWAL, J.]

Sd/-
[ANOOP V. MOHTA, J.]