

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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Writ Petition No.29387 of 2017

Between

Joseph Sriharsha and Mary Indraj Educational Society,
Plot No.102, High Court Colony, Vanasthalipuram,
Hyderabad and others

.... Petitioners

And

Jawaharlal Nehru Technological University,
Hyderabad, rep. by its Registrar, Kukatpally,
Hyderabad and others

... Respondents

JUDGMENT PRONOUNCED ON

: 04.09.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

:

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 29387 of 2017

Order:

Heard learned counsel for the petitioners and learned Standing Counsel for the respondents 1, 4 and 5. Since the Writ Petition and the interim relief sought for in the Writ Petition are one and the same, the main Writ Petition itself is being disposed of by this order.

This Writ Petition is filed challenging the proceedings of the first respondent University dated 24.08.2017 in not inclining to grant affiliation to the second petitioner institution for an intake over and above 100 seats for B. Pharmacy Course relying on the Pharmacy Council of India norms, ignoring the approved intake of 300 seats granted by the fourth respondent AICTE, despite the direction of this Court in WPMP No.33492 of 2017 in W.P.No.26124 of 2017 dated 22.08.2017.

A perusal of the Writ Petition shows that no facts were stated except referring to the previous orders in relation to the present dispute. The Writ Petition is liable to be dismissed on this sole ground itself.

But, as per the enclosed copy of the affidavit filed along with W.P.No.26124 of 2017, the facts are that the first petitioner Society is a registered Society under the Andhra Pradesh Societies Registration Act, 1930 and it established the second petitioner institution offering various technical courses/programmes including Pharmacy programme. It was approved by the Pharmacy Council of India and All India Council for Technical Education. It was affiliated to the first respondent University and was permanently recognised by the National Commission for Minority Educational Institutions, Government of India, New Delhi. It is stated that

the second petitioner was granted approval for B. Pharmacy course with an intake of 60 students from the academic year 2007-08 to 2009-10 and the said intake was increased to 180 from 2010-11 to 2012-13. The intake was further increased to 300 from 2013-14 by the fourth respondent. The third respondent limited the approval of intake to 60/100 seats in purported exercise of its powers under the Pharmacy Act, 1948 as against the approved intake of 180/300 seats granted by the fourth respondent. It appears that the third respondent issued a public notice stating that the institutions intending to start D. Pharm/B. Pharm course are required to apply nine (9) months in advance of starting the course for the year for consideration of approval by the third respondent. It was also stated that the said policy would be strictly adhered to with effect from 2010-2011 academic session onwards. It appears that the petitioner filed W.P.No.25857 of 2013 before this Court contending that if any conflict is there between the Pharmacy Act and the All India Council for Technical Education Act the latter would prevail. The said Writ Petition is pending. It is also stated that when a similar issue was raised before the Hon'ble Supreme Court of India in Indira Bahuuddeshiya S. Sanstha v. Directorate of Technical Education in SLP (C) No.24625 of 2013, the Hon'ble Supreme Court was pleased to issue notice and permitted provisional admission to students without any equity in their favour on 02.08.2013. The third respondent filed a transfer petition for transferring W.P.No.25857 of 2013 pending before this Court for hearing the same along with SLP (C) No.24625 of 2013. Later on, the SLP was withdrawn by the petitioner therein, as a result of which W.P.No.25857 of 2013 continued to be pending in this Court. The third respondent decided to grant approval for 60 seats from 2008-09 to 2011-12 and 100 seats from

2012-13 to 2016-17 subject to condition of the institution submitting an attested affidavit to the effect that it will not admit more than 100 students from 2016-17 and if the contentions of the third respondent are upheld by this Court in the transfer petition filed before the Supreme Court, the institution will have to neutralize the excess admissions as per the policy decision of the third respondent as reflected in the circular dated 24.06.2016. The first respondent University granted affiliation for B. Pharmacy course for an intake of 300 seats for the academic year 2016-17 initially, but later on the letter issued by the sixth respondent dated 30.07.2016 to the Admission and Fee Regulatory Committee, the first respondent reduced the intake of B. Pharmacy from 300 to 100 on the ground that the grant of approval by the Pharmacy Council of India was only for 100 seats. The third respondent communicated its decision of 100th Central Council meeting dated 14/15.11.2016 to grant permission to the second petitioner to 100 seats from 2015-16 academic session in the light of the third surprise inspection. The fourth respondent granted approval for intake of 300 students for B. Pharmacy course for the academic year 2017-18 on 30.03.2017, but when the first respondent granted affiliation to the second petitioner College for an intake of 100 seats only, the petitioner filed W.P.No.26124 of 2017.

This Court, in view of the earlier orders passed by this Court in WPMP No.26571 of 2017 in WP No.21610 of 2017, passed a similar order in WPMP No.32400 of 2017 in WP No.26124 of 2017 stating that the petitioner College shall inform the students about the objection raised by the Pharmacy Council of India with regard to intake of students and also take an undertaking from them that they will not claim any equities after completing the course, in case of any objection being raised by the

Pharmacy Council of India. Thereafter, a clarification petition was filed in WPMP No.33492 of 2017 in WP No.26124 of 2017, but this Court was not inclined to clarify the said order, but gave liberty to the petitioners to submit an appropriate application to the University and the University was directed to dispose of the same within 48 hours. Accordingly, the second petitioner submitted an application on 23.08.2017 for which the University replied on 24.08.2017 stating that the University was not inclined to grant affiliation over 100 seats for B. Pharmacy, as University is following PCI norms in so far as Pharmacy is concerned and PCI is not registering the students as Pharmacist over and above 100 students. Challenging the said order of the first respondent University dated 24.08.2017, this Writ Petition is filed.

Now the issue with regard to primacy in the matter of granting approval either by the Pharmacy Council of India or by All India Council for Technical Education is pending consideration before this Court in W.P.No.25857 of 2013. The said issue has not been authoritatively decided by any Court so far. The approval for 100 seats was granted by the third respondent for the academic year 2016-17 subject to an attested affidavit that it will not admit more than 100 students and would abide by the decision in the transfer petition filed before the Supreme Court. The said condition shall be made applicable for this academic year also, though the transfer petition might have become infructuous in view of withdrawal of SLP (C) No.24625 of 2013 by the petitioners therein before the Supreme Court. The All India Council for Technical Education clarified the position with regard to reduction of intake in 'Revised FAQs 2017-18' as follows:

“25. Can the intake be reduced from the approved intake of AICTE?

Ans: No. However, University may consider the reduction of intake (Reduction in number of sections/divisions) as per the availability of facilities. Further, the College has to apply for such reduced intake to the AICTE in the next academic year.

26. In case approval for reduction of intake for any course is not received from AICTE by the time of University FFC inspection, what will be the intake considered by the FFC for this course?

Ans. In the cases, where the institute has applied to AICTE for Reduction/Increase in Intake, Closure of courses, Starting of new courses for the academic year 2017-18, they need to indicate the same to the university in the online form A117 with proper documentary evidence that they have applied to AICTE for such reduction/increase in intake, closure of courses, starting of new courses.”

Thus, the role of the University is not taken away with regard to granting affiliation and now the University wants to follow the prescription made by the Pharmacy Council of India. In a public notice made on 16.05.2017 by the Pharmacy Council of India, it was made clear that the admissions made over and above the sanctioned intake by Pharmacy Council of India will not be eligible for registration as a Pharmacist under the Pharmacy Act to practice the profession. The students were advised to verify the admission number before seeking admission and it was made clear that the consequences for excess admissions shall rest on the institution and the Pharmacy Council of India is in no way held responsible for the same. In view of this clear position, this Court cannot direct the first respondent to grant affiliation to the second petitioner institution in excess of the intake permitted by the third respondent giving a wrong impression to the students and placing their future in uncertainty. As stated above, the main issue with regard to primacy of Pharmacy Council of India to approve intake is pending in W.P.No.25857 of 2013. The second petitioner institution gave an affidavit for the academic year 2016-17 stating that it will not admit more than 100 students. When it undertook to bind by such an affidavit in the previous academic year, the

petitioners cannot seek a direction for this academic year with out permission of the third respondent. In view of the same, this Court sees no ground to entertain the present Writ Petition.

The Writ Petition is, accordingly, dismissed at the admission stage. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 04th September, 2017
Nsr

