

CWP No.20238 of 2016 (O&M)

[1]

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

**CWP No.20238 of 2016 (O&M)
Date of decision:10.05.2017**

Mange Ram Educational Charitable Trust ...Petitioner

Versus

Pt. B.D.Sharma University of Health Sciences, Rohtak & others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Partap Atma Ram, Advocate, for the petitioner.

Mr. Amit Rao, Advocate, for
Mr. Anurag Goyal, Advocate, for respondent no.1.

Mr. Vaibhav Gupta, Advocate, for
Mr. K.K.Gupta, Advocate, for respondent no.2.

Mr. Ashok Sharma, Advocate,
for respondent no.3.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. B.S.Sandhu, Advocate.

Rakesh Kumar Jain, J.

The prayer made in this petition is for the issuance of a writ in the nature of *mandamus*, directing the Pt. B.D. Sharma University of Health Sciences, Rohtak (hereinafter referred to as the "University") to accept the registration return of the students admitted to the petitioner's college and for the issuance of a writ in the nature of *certiorari* for quashing the order dated 12.08.2016 (Annexure P-15), by which request made by the petitioner to appoint the University Observer/Counselor for admission to the Bachelor of

Pharmacy course (hereinafter referred to as the “ B. Pharmacy”) in the petitioner's college, namely, South Point College of Pharmacy was declined on the ground that the petitioner has not been granted affiliation to start B. Pharmacy course and, thus, neither the University Observer/Counselor can be appointed nor admissions can be allowed, and the offending portion of the order dated 14.09.2016 (Annexure P-18), by which the University passed the order for withdrawal of provisional affiliation in regard to the admissions made by the petitioner in B. Pharmacy course for the academic session 2016-17 as the last date for admission to the B. Pharmacy course, i.e. 15.08.2016, for the academic session 2016-2017 was already over.

Briefly stated, the petitioner-trust passed a resolution on 12.09.2015 to establish a new College of Pharmacy for starting B. Pharmacy Degree course, under the name and style of South Point College of Pharmacy. The petitioner submitted its proposal to the University on 30.12.2015 and on the same date, applied to the Director, Technical Education, Haryana (respondent no.5) for issuance of a 'No Objection Certificate' in order to establish the proposed College of Pharmacy. Respondent no.5 replied vide its letter dated 02.06.2016 that pursuant to the instructions contained in the letter dated 30.11.2011 issued to all the affiliating Universities of the State, the affiliating Universities do not require 'State NOC' to affiliate any institute duly approved by the All India Council for Technical Education (hereinafter referred to as the “AICTE”). The petitioner has allegedly remitted an amount of ₹1,75,000/- on 02.01.2016 to the University for the purpose of processing of its application for establishing a new College of Pharmacy and towards other fees. The University, in response, informed on 29.02.2016 that assessment

team of the University would visit their college shortly to physically verify the feasibility and infrastructure for granting provisional affiliation to start B. Pharmacy course with an intake of 60 seats for the session 2016-17. It is alleged that as per the information of the petitioner, no deficiency was found by the inspecting team of the University and nothing was communicated by the University. It is further alleged that on 04.03.2016, the petitioner submitted its online application to the AICTE (respondent no.2) and a hard copy thereof was also submitted on 08.03.2016. The University had allegedly, after inspection, issued Consent of Affiliation on 20.04.2016 stating therein that on the basis of preliminary inquiry report, *“the University grant consent of affiliation to South Point College of Pharmacy, Nangal Khurd, Murthal Chowk, Sonapat (Haryana) for starting the Bachelor of Pharmacy (Practice) Course. The applicant college shall be allowed to start the above mentioned course only after obtaining the approval for conduct of the course of study from the Pharmacy Council of India. The University also undertakes to conduct the examination as prescribed in the Bachelor of Pharmacy (Practice) Course Regulations, 2014. This certificate is valid for a period of two years from the date of issue”*. It is further alleged that respondent no.2 also issued a letter of approval on 30.04.2016 to the petitioner.

Thereafter, the petitioner has allegedly applied to the Pharmacy Council of India (hereinafter referred to as the “PCI”) for starting B. Pharmacy course on 02.06.2016 for the academic session 2016-17, pursuant to which petitioner's college was inspected by the PCI on 23.07.2016 and allegedly approved the case of the petitioner on 03.08.2016 for the intake of 60 seats for the academic session 2016-17 but the said decision dated 03.08.2016 was not

communicated to the petitioner on 03.08.2016.

It is alleged by the petitioner that vide its letter dated 11.08.2016, it requested the University to appoint its Observer/Counselor for admission to the B. Pharmacy course for the academic session 2016-17 as they have got the approval from the AICTE and consent of affiliation from the University and the PCI has inspected their college, report of which was awaited at that stage. The petitioner allegedly issued advertisement dated 11.08.2016 in various newspapers for making admission to the B. Pharmacy course and on the same day, it requested the University to depute its Observer/Counselor. The admissions were made by the petitioner's college to the 60 seats in the following manner:-

- (i) 12 students on 11.08.2016
- (ii) 21 students on 12.08.2016
- (iii) 14 students on 13.08.2016
- (iv) 8 students on 14.08.2016
- (v) 5 students on 15.08.2016

It is alleged in para no.19 of the writ petition that on 12.08.2016, the University sent an e-mail (Annexure P-15) but since the admission process had already commenced on 11.08.2016, therefore, the said e-mail was missed by the petitioner's college, which was allegedly in any case received after admissions of 35 students.

At this stage, it would be pertinent to mention about the e-mail dated 12.08.2016, which has a great significance in this case, in which the following was brought to the notice of the petitioner:-

“Please refer to your office letter No.SPCP/2016/8/707 dated 11.08.2016 on the subject cited above.

Your institute has not been granted affiliation to start B. Pharmacy Course for the Academic Session 2016-17 without which neither University Observer can be appointed nor admissions can be allowed.”

It is further averred that the University had once again proposed to inspect the petitioner's college vide letter dated 18.08.2016. The petitioner had allegedly deposited ₹3 lacs towards affiliation and inspection was carried out by the University on 24.08.2016 and affiliation was granted on 14.09.2016 but while granting the affiliation, the University restricted the petitioner to admit/enroll any student for the academic session 2016-17 as the last date, i.e. 15.08.2016, for admission to B. Pharmacy course had already been over. It is further submitted that though the petitioner had submitted registration return of the admitted students to the University by hand but it was not accepted. Accordingly, the petitioner has assailed the decision of the University in refusing registration of the admitted students.

On the other hand, the pleaded case of the University is that the petitioner submitted the proposal on 30.12.2015 for establishment of a new College of Pharmacy for the academic session 2016-17. The assessment team of the University, under the Chairmanship of Dr. Janardan Singh, visited the petitioner's college on 14.03.2016 and, thereafter, Consent of Affiliation was issued to the petitioner's college on 20.04.2016 for starting B. Pharmacy course in which it was clearly mentioned that the petitioner's college shall be allowed to start the above mentioned course only after obtaining approval for conduct of the course of study from the PCI. Thereafter, on 11.08.2016, the petitioner requested the University to appoint its Observer for the purpose of admission. In the said letter dated 11.08.2016, it has also been mentioned by the petitioner's college that *“the PCI inspection has also been done at the campus*

and will submit the report as soon as get it from the PCI". In response to the aforesaid letter dated 11.08.2016, the University, without any delay, informed the petitioner on the very next day, i.e. 12.08.2016, that since the petitioner's college has not been granted affiliation by the PCI to start B. Pharmacy course for the academic session 2016-17, as has been mentioned by them in their letter dated 11.08.2016, therefore, neither the University Observer can be appointed nor admissions can be allowed to be made.

It is averred by the University that Regulation 9(i) of the Bachelor of Pharmacy (B. Pharm) Course Regulations, 2014 (hereinafter referred to as the "Regulations"), issued by the Government of India vide notification dated 10.12.2014, provides that no person, institution, society, trust or university shall start and conduct B. Pharm programme without the prior approval of the Pharmacy Council of India. However, the petitioner, without obtaining approval from the PCI for making admission and without appointment of its Observer by the University, at its own level, admitted the students to the B. Pharmacy course.

It is further averred that the approval granted by the PCI was submitted by the petitioner to the University only on 16.08.2016, which was received by the University on 17.08.2016 but till that time, as per own admission of the petitioner, the admissions had already been made. It is alleged that no admission could have been made by the petitioner after the cut-off-date i.e. 15.08.2016, as per the direction issued by the Supreme Court in the case of **Parshavanath Charitable Trust & Ors. vs. AICTE & Ors.**, 2013(1) JT 557, in which it has been held that all seats should be filled positively by 15th August after which there shall be no admission, whatever be the reason

and ground. It is also alleged that the University had already informed all the affiliated Pharmacy Colleges to follow the schedule of admission as given by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**.

It is further averred that after getting approval of the PCI, the assessment team of the University, constituted under the Chairmanship of Dr. R.B.Jain, visited the petitioner's college on 24.08.2016 and after considering the inspection report, the University granted provisional affiliation to the petitioner's college on 14.09.2016 to start the B. Pharmacy course with an intake of 60 seats with clear cut stipulation that the college cannot admit any student for the academic session 2016-17 as the last date for admission, i.e. 15.08.2016, was already over.

It is further averred that the admissions made by the petitioner's college, at their own level, without prior approval of the PCI on the relevant date(s) and in absence of the University Observer, are in violation of Regulation 9(i) of the Regulations.

The stand taken by the PCI in its reply is that the decision of the 272nd meeting of Executive Committee was communicated to the petitioner vide letter dated 24.08.2016 with a copy endorsed to the University and the Haryana State Pharmacy Council. The relevant portion of the reply submitted by the PCI is as under:-

“The above decision of the 272nd Executive Committee was communicated to petitioner institution vide letter dt. 24.8.2016 with a copy endorsed to the respondent No.1 University and the Haryana State Pharmacy Council.”

Counsel for the petitioner has submitted that in order to start the B. Pharmacy course, the application has to be first made to the AICTE for

establishment of the College of Pharmacy and, thereafter, to the PCI for seeking approval to commence the classes and to impart education in the pharmacy stream. According to the petitioner, Section 2(g) of the All India Council for Technical Education Act, 1987 (hereinafter referred to as the “Act”) defines “Technical Education” with regard to the 'pharmacy stream' and Section 10(k) of the Act relates to the grant of approval for starting new technical institutions. It is further submitted that in terms of Sections 10 and 18 of the Pharmacy Act, 1948 (hereinafter referred to as the “Act of 1948”), the PCI has framed and notified the Regulations, in which Regulation 9(i) provides that *“no person, institution, society, trust or university shall start and conduct B. Pharm programme without the prior approval of the Pharmacy Council of India”*.

The case of the petitioner is that it had the approval of the AICTE dated 30.04.2016 and of the PCI dated 03.08.2016 and Consent of Affiliation from the University dated 20.04.2016, on the basis of which it issued advertisement on 11.08.2016 in various newspapers for starting admissions to the B. Pharmacy course and the admissions to all the 60 seats were made well within the cut off date prescribed by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**. Therefore, the action of the University vide its letter dated 12.08.2016, turning down request of the petitioner's college for appointment of the Observer to make admissions, is patently illegal and that the impugned letter dated 14.09.2016, by which it has been mentioned that the admissions made by the petitioner to 60 seats is in violation of the decision of the Supreme Court in **Parshavanath Charitable Trust's case (supra)** as the petitioner cannot make admissions to the 60 seats because the last date for admission, i.e. 15.08.2016, was already over and in the event of any such violation, the provisional affiliation granted vide letter dated 14.09.2016 shall

be withdrawn, is also illegal.

Counsel for the petitioner has submitted that the affiliation dated 14.09.2016 would relate back to the Consent of Affiliation which was granted on 20.04.2016. It is also submitted that there is no fault at the instance of the petitioner if the University had not appointed the Observer despite their request made vide letter No.SPCP/2016/8/707 dated 11.08.2016, in which the petitioner has clearly mentioned that *“the PCI inspection has also been done at the campus and will submit the report as soon as get from the PCI (copy of PCI inspection letter is attached as Annexure 3), we have also advertised for the admissions in various leading newspapers (copy attached as Annexure 4).....so kindly appoint the counselor for the admission of the session 2016-17 and do the needful”*.

It is also submitted that at no point of time, any authority of the AICTE, PCI or the University had found any deficiency in the infrastructure of the petitioner's college.

On the other hand, counsel for the University has submitted that the petitioner has also admitted that the approval of the PCI is mandatory in terms of Regulation 9(i) of the Regulations. It is also the case of the University that only the Consent of Affiliation was given to the petitioner on 20.04.2016, in which it was specifically mentioned that the applicant-college shall be allowed to start the above mentioned course only after obtaining the approval for conduct of the course of study from the PCI. The petitioner has relied upon the minutes of 272nd meeting of the Executive Committee of the PCI, which was held on 03.08.2016, to allege that the petitioner's college was given approval by the PCI on 03.08.2016, whereas in the letter dated 11.08.2016

addressed by the Principal of the petitioner's college to the University, the petitioner has not referred to the said approval dated 03.08.2016 rather it only has referred to the inspection made by the PCI but it started the admissions also by giving advertisement in the leading newspapers and asked the University for appointment of its Observer and when the University responded on 12.08.2016 through e-mail to the said letter dated 11.08.2016 that since the University has not been given the approval granted by the PCI to start the B. Pharmacy course for the academic session 2016-17 without which the University can neither appoint the Observer nor the admissions can be allowed to be made, the said e-mail sent by the University is stated to have been missed by the petitioner, which has been so stated in para no.19 of the writ petition because it did not suit to their plans. It is also submitted that in the reply filed by the PCI, it has been categorically mentioned that the decision of the 272nd meeting of the Executive Committee of the PCI was communicated to the petitioner on 24.08.2016, meaning thereby the petitioner was not in possession of the approval from the PCI on the relevant dates of admission, which fact is crystal clear from the letter dated 11.08.2016 written by the petitioner itself to the University, without which the petitioner could not have started the process of admission in view of Regulation 9(i) of the Regulations, referred to above. It is also submitted that the University has allegedly sent the approval granted by the PCI on 16.08.2016, which was received by the University on 17.08.2016 i.e. after the cut of date for admission to the B. Pharmacy course i.e. 15.08.2016 and, therefore, the admissions made by the petitioner have rightly been not registered and recognized by the University.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that the petitioner was required to have approval of the PCI in terms of Regulation 9(i) of the Regulations for starting and conducting the B. Pharmacy programme. The University had, of course, given Consent for Affiliation on 20.04.2016 but at the same time the petitioner was apprised that it cannot start the course without obtaining prior approval of the PCI. The decision of 272nd meeting of the Executive Committee of the PCI dated 03.08.2016 was not conveyed to the petitioner till 11.08.2016, which fact is also admitted by the petitioner in their letter dated 11.08.2016, but still it went ahead in issuing advertisements in various newspapers for admission to the B. Pharmacy course and also requested the University to appoint its Observer for admission for the academic session 2016-17. The University did not waste time while responding to the letter dated 11.08.2016 and sent an e-mail to the petitioner on 12.08.2016, in which the petitioner was categorically apprised that since the petitioner has not got the approval of the PCI to start the B. Pharmacy course for the academic session 2016-17, therefore, the University will neither send any Observer nor they would be allowed to make any admission.

The petitioner has very conveniently made a reference in their petition that they had missed the said e-mail dated 12.08.2016 and the reason is obvious because the petitioner had started admissions w.e.f. 11.08.2016 itself, at their own level, and that too without even waiting for the Observer to be appointed by the University in response to their letter of the even date.

It is very strange that on the one hand, the petitioner wrote the

letter dated 11.08.2016 to the University for the appointment of an Observer for the purpose of admission and on the same day, they admitted 12 students, as has been admitted in para no.18 of the writ petition, and after ignoring the e-mail dated 12.08.2016, 21 students were admitted on 12.08.2016 and continued to admit the students till 15.08.2016 until all the 60 seats were filled up.

It is also very strange that the PCI has averred in its reply that the decision of 272nd meeting of its Executive Committee was communicated to the petitioner vide letter dated 24.08.2016 with a copy to the University and Haryana State Pharmacy Council and in para no.6 of the reply filed by the University, it is mentioned that the petitioner's college submitted the approval of the PCI on 16.08.2016, which was received by the University on 17.08.2016. In any case, the approval of the PCI was submitted to the University only after the cut off date, i.e. 15.08.2016, by which all the admissions were made by the petitioner at their own level, without prior approval of the PCI because as per their own admission in the letter dated 11.08.2016, the decision dated 03.08.2016 of the PCI was not communicated to them till 15.08.2016. Further more, the petitioner's college did not even wait for a single day either for the appointment of the Observer by the University or for their response to the petitioner's letter dated 11.08.2016. It is also mentioned by the University that it had granted Consent of Affiliation on 20.04.2016 only for the purpose that the petitioner may seek approval from the PCI and it cannot be correlated with the provisional affiliation ultimately granted by the University on 14.09.2016, in which it has been specifically mentioned that the approval has not been received in time and the cut off date

for admission to the B. Pharmacy course for the academic session 2016-17 was already over, therefore no admission can be made.

The petitioner is, thus, apparently at fault for which it cannot be rewarded by issuing a direction to the University to register students illegally admitted by it and there is no error in the impugned orders dated 12.08.2016 and 14.09.2016, for which a writ of *certiorari* can be issued.

Consequently, in view of the aforesaid discussion, I do not find any reason for the purpose of interference in this petition and hence, the same is hereby dismissed. However, the students, illegally admitted by the petitioner's college without approval of the PCI, without provisional affiliation by the University and even without appointment of Observer by the University, shall be at liberty to pursue their legal remedies for refund of fee and compensatory costs by launching appropriate proceedings, both civil and criminal, against the petitioner's college, if so advised.

May 10, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No