

CWP No.3111 of 2017 (O&M)

[1]

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

**CWP No.3111 of 2017 (O&M)
Date of decision:18.05.2017**

Ankit Kumar and another

...Petitioners

Versus

Haryana State Technical Educational Society and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Abhimanyu Tiwari, Advocate,
for the petitioners.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. P.K.Chugh, Advocate,
for respondent no.1.

Mr. Bhuwan Vats, Advocate,
for respondent no.2.

Mr. N.K.Joshi, Advocate,
for respondent no.3.

Rakesh Kumar Jain, J.

The petitioners are the students of Lord Shiva College of Pharmacy (hereinafter referred to as the “college”), a unit of the Lord Shiva Charitable Trust, affiliated to Pt. B.D. Sharma University of Health Sciences (hereinafter referred to as the “University”). The University issued guidelines to the colleges affiliated with it to follow the schedule of admission, laid down by the Supreme Court in the case of **Parshavanath Charitable Trust & Ors. vs. AICTE & Ors.**, 2013(1) JT 557, as per which the last cut off date for admission in the Pharmacy course for the academic session 2016-17 was

15.08.2016.

The college had to fill 60 seats of 1st year B. Pharmacy course for the academic session 2016-17. The college requested the University, vide its letter No.LSCP/2016/July/Spl.01 dated 28.07.2016, for appointment of the University Observer for conducting the first counselling of B. Pharmacy course. The request made by the college in its letter dated 28.07.2016 is reproduced as under:-

“Reference with the subject cited above, it is submitted that we are running M. Pharm & B. Pharm. Courses duly affiliated with your University. Sir, kindly depute University Nominee to observe the admission process (1st counselling) of M. Pharm., B. Pharm 1st, B. Pharm.II (LEET), Session 2016-17 at Lord Shiva College of Pharmacy, Sirsa on 30.07.2016 (Saturday) at 10.30 A.M. For this, requisite information through adv. in leading newspapers has already been given (copy enclosed).”

The University appointed Shri Naveen Khatri, Assistant Professor, as its observer to oversee the first counselling of the college for admission to Pharmacy course. The relevant extract of the office order of the University in this regard is also reproduced as under:-

“In partial modification in the office order bearing vide Endst. No.UHSR/Acad./A-II/16/7112-21 dated 27.07.2016, following Officers of College of Pharmacy, Pt. B.D. Sharma PGIMS, Rohtak are hereby appointed as University Observers to oversee the counselling process in the institutions as under for admission to Pharmacy Courses for the Session 2016-17 on the dates shown against each:-

Sr. No.	College	Course	Date & Time of Counseling	Name of University Obersrver
1	Lord Shiva College of Pharmacy, Sirsa	B. Pharmacy, B. Pharmacy (LEET) & M. Pharmacy	30.07.2016 at 10:30 AM onwards	Sh. Naveen Khatri, Asstt. Prof.
2 to 5	xxx	xxx	xxx	xxx

They will also check whether extension in provisional affiliation for the Session 2016-17 has been granted by Pt. B.D. Sharma University of Health Sciences, Rohtak and approval has been granted by AICTE. They will submit the report to the Dean, Academic Affairs, Pt. B.D. Sharma University of Health Sciences, Rohtak immediately. They will be paid TA/DA as per their entitlement according to the normal rules and in addition remuneration fee of Rs.2500/- per day will also be paid by the concerned Institute.”

The first counselling was held on 30.07.2016 in presence of the University Observer and 58 eligible candidates were admitted at that time. The University Observer reported vide his letter No.UHSR/Acad./A-II/2016/7174-83 to the University to the effect that “as per the above reference enclosed, please find the list of candidates admitted on 30/07/2016 in B. Pharmacy course for the session 2016-17 in Lord Shiva College of Pharmacy, Sirsa”. The list of the admitted students was also attached with the said letter. After the first counselling was over, one Surinder withdrew his candidature on 02.08.2016 and, thus, 3 seats became available on that date, out of total 60 seats. The University appointed Dr. Manish Dhall, Assistant Professor, College of Pharmacy of the University to oversee the 2nd counselling, which was to be held on 09.08.2016 to fill up the remaining 3 seats. The 3 seats were also filled up in the presence of 4 members of the college i.e. Director General, Principal, Professor and Associate Professor of the college including the University Observer Dr. Manish Dhall. It is alleged that later on two students, namely, Oshin Kataria and Gautam Mehta withdrew their candidature, as a result thereof, 2 seats became available on 11.08.2016. This time, the college did not ask for appointment of the University Observer and held the 3rd counselling on 15.08.2016 on its own and granted admission to the present

petitioners. There is no dispute that the admission of the petitioners was made in the absence of the University nominee/observer but it is alleged that they were admitted before the cut off date i.e. 15.08.2016. It is further alleged that the college informed the University about the admission of the petitioners while submitting the list of 3rd counselling for their registration but the University issued a show cause notice on 08.11.2016. The text of the show cause notice is also relevant and is reproduced as under:-

“Reference your letter No.LSCP/2016/456 dated 12.09.2016 vide which Registration Returns of the students of B. Pharmacy of your College has been sent for registration purpose.

It is to inform you that while checking the Registration Returns submitted by your college with the list of observer deputed by the University for counselling of B. Pharmacy/B. Pharmacy LEET course for the session 2016-17, it has been found that the following candidates were not admitted during the course of counselling. The admission made by the college at their own level is the violation of university instruction issued to all the college on dated 10.05.2013.

<i>Sr. No.</i>	<i>Name of the Candidate</i>	<i>Father's Name</i>
B. Pharmacy		
1	Ankit Kumar	Satpal Singh
2	Nidhi Sharma	Pawan Kumar

Keeping in view the above, the matter has been considered by the competent authorities and it has been decided to issue your College a Show Cause Notice under what circumstances, the above said candidates have been admitted without University Observer. Your written reply/representation, if any, in response to this notice must reach the undersigned within seven days from the date of the issue of this notice failing which it will be presumed that you have nothing to say in this regard OR the reply submitted if not found satisfactory then a final decision as considered just and appropriate under rules shall be taken by the University authority.”

The college replied to the aforesaid show cause notice on 15.11.2016, in which it is alleged that two rounds of counselling upto 09.08.2016 was held in presence of the University observer but after 09.08.2016, when two more seats became available, those have been filled up by the Admission Committee of the college because the college is a self-financed institute and each vacant seat causes a lot of financial burden to it. The University, however, cancelled the admission of the petitioners vide its impugned order dated 23.11.2016 on the ground that the admissions have been made by the college at their own level without the University Observer. The college, allegedly, made a representation on 28.11.2016, which was also turned down vide the impugned order dated 06.01.2017. The petitioners have, thus, challenged the order dated 23.11.2016 by which their admissions were cancelled and order dated 23.11.2016 by which the representation made by the college against cancellation of admissions of the petitioners was rejected.

Counsel for the petitioners has submitted that since there is no mandatory condition of the presence of the University Observer at the time of counselling, therefore, admissions of the petitioners could not have been cancelled by the University. It is also submitted that the role of the University Observer is only to see the eligibility of the candidates and not beyond that and the admission of the petitioners have not been cancelled on the ground of their ineligibility. It is also submitted that the admission of the petitioners are in any case before the cut off date 15.08.2016, as has been laid down by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**.

It is also submitted that the Haryana State Technical Educational Society had also issued a public notice asking the concerned universities/

institutions for editing/correction/updation of records of the students admitted upto 15.08.2016 for the session 2016-17 and since the petitioners were admitted before the cut off date, therefore, their admissions should have been regularized.

On the other hand, counsel for the respondents have submitted that the guidelines have been issued by the University on 10.05.2013 to all the Principals/Directors of Colleges/Institutes affiliated with it, in which it was provided that no admission should be made in future without getting extension in provisional affiliation from the University and without association of the University observer at the time of admission. It was also made clear that those instructions have to be followed strictly. It is further submitted that the said instructions were followed by the college in its letter and spirit initially when it wrote a letter to the University on 28.07.2016 for appointment of the University Observer for conducting the first counselling. Accordingly, the University appointed Naveen Khatri, Assistant Professor as the University Observer to oversee the first counselling, in which out of 60 seats, 58 seats were filled up. The said University Observer, after counselling, submitted to the University, list of the students admitted by the college. Thereafter, 3 more vacancies occurred in the college and Dr. Manish Dhall, Assistant Professor, was appointed as the University Observer to oversee the second counselling held on 09.08.2016, in which all the three remaining seats were also filled up. After the second counselling was over, Dr. Manish Dhall submitted the list of the admitted candidates with his report to the University. Still thereafter, when two more vacancy became available because of the withdrawal of their candidature by the two admitted students on 11.08.2016, admittedly there was

no effort on the part of the college to ask the University to send their nominee to associate in the third counselling, which was to be held on 15.08.2016, rather the admissions were made by the college at their own level. No reason has been given by the college in their reply as to why they did not ask for the association of the University Observer in the third counselling, though they were present in the first and second counselling at their instance. All that has been said by the college in their representation is that it is a self-financed institution, in which each vacancy causes a financial burden on it. There is no case of the college, pleaded in their reply, that the presence of the University Observer was unnecessary because had it been unnecessary then they would not have written letter to the University on 28.07.2016 for appointment of the nominee when the first counselling had to take place and they would have also not given any importance to the University nominee who had participated in the 2nd counselling. It is the third counselling in which the college did not bother to ask for the presence of the University Observer and admitted the students at their own level only because of the reason given in the representation made by the college to the University that each vacant seat would cause a financial loss to them.

This approach of the college is unwarranted and uncalled for and the petitioners cannot be permitted to urge that there was no requirement of the University nominee/observer at the time of counselling. The college is estopped by its own act and conduct as it had followed the instructions dated 10.05.2013 in the first and second counsellings but avoided the procedure of appointment of University Observer deliberately in the third counselling and has itself not come forward to protect the admissions of the petitioners, rather

the students have been put in the front to earn the sympathy of the Court.

It also requires pertinent notice that it is not the first case in which the self-financed educational institution has only thought of its profits while giving admission in contravention of the set principles, rather it is a usual practice which has generated lot of litigation in this Court and deserves to be curbed.

In view of the above, I do not find any illegality in the impugned order(s) passed by the University and consequently, the present writ petition is dismissed being denuded of any merit.

May 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No