

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 482 of 2018**

1. All India Council For Technical Education, Through The Member Secretary, Nelson Mandela Marg, Vasant Kunj, New Delhi, 110067.(Respondent No. 1 In W. P.)
2. Regional Officer, All India Counsel For Technical Education Central Regional Office, Airport Bypass Road, Gandhi Nagar, Bhopal, (Madhya Pradesh) 462033.((Respondent No. 2 In W. P.).
3. Standing Appellate Committee, (SAC), Through Its Chairman, AICTE Head Quarter Nelson Mandela Marg, Vasant Kunj New Delhi. 110070.(Respondent No. 3 In W.P.).

---- Petitioner**Versus**

1. Holistic Foundation Durg A Society Registered Under The Provisions Of The Chhattisgarh Societies Registration Adhiniyam, 1973, Through Its Secretary, Jay Chandrakar, S/o Shri Sushil Chandrakar, Village Chandkhuri, Tahsil And District- Durg, Chhattisgarh.(Petitioner In Writ Petition).

---- Respondent**WA No. 483 of 2018**

1. All India Council For Technical Education Through Its Chairman, 7th Floor, Chandralok Building, Janpath, New- Delhi 11001 (Address Wrongly Given In Writ Petition) The Correct Address Is Nelson Mandela Marg, New Delhi 110001.....(Respondent No. 2 In W.P.)
2. Regional Officer All India Council For Technical Education Central Regional Office, Tagore Hostel No. 2, Shyamala Hills, Bhopal 462002 (Address Wrongly Given In Writ Petition) Correct Address Is Gandhi Nagar, Airport By Pass Road, Bhopal 462033.....(Respondent No. 3 On W.P.)

---- Petitioner**Versus**

1. J. K. Institute Of Pharmaceutical Education And Research (Owned And Managed By Jamia Education Society), Opposite B.J.P. Office Karbala

Road Bilaspur, Chhattisgarh Through Its Authorized Signatory Shri Dewashish Roy S/o Shri R.N. Roy Aged About 58 Years, R/o Jamia Education Society Opposite B.J.P. Office, Karbala Road Biaspur, Chhattisgarh.....(Petitioner In Writ Petition)

2. State Of Chhattisgarh, Through Secretary Department Of Technical Education, Manpower Employment, Science And Technology Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur 492002 (Chhattisgarh).....(Respondent No 1 In Writ Petition),
3. Pharmacy Council Of India Through Its Registrar-Cum-Secretary, Combined Councils Building, Kotla Road, Aiwan-E-Ghalib Marg, New Delhi-110002.....(Respondent No. 4 In Writ Petition)
4. Chhattisgarh Swami Vivekanand Technical University, Through Its Registrar, North Park Avenue, Sector 8, Bhilai, District Durg Chhattisgarh 490009.....(Respondent No. 5 In Writ Petition)

---- Respondent

WA No. 484 of 2018

1. All India Council For Technical Education , Through Its Chairman , 7th Floor, Chandralok Building , Janpath , New Delhi - 11001 (Address Wrongly Given In Writ Petition) The Correct Address Is Nelson Mandela Marg , New Delhi 110001 (Respondent No.2 in writ petition)
2. Regional Officer All India Counsel For Technical Education Central Regional Office, Tagore Hostel No. 2, Shyamala Hills , Bhopal 462002 (Address Wrongly Given In Writ Petition) Correct Address Is Gandhi Nagar , Airport By Pass Road , Bhopal 462033 (Respondent No.3 in writ petition)

---- Petitioner

Versus

1. Aayush College Of Pharmacy, (Owned And Managed By Gram Meduka Krishi Shikhan Samiti) Village - Meduka , Post Office Darri, District Bilaspur Chhattisgarh. (petitioner in writ petition)
2. State Of Chhattisgarh , Through Secretary Department Of Technical Education, Manpower Employment, Science And Technology Department Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur 492002 (CG) (Respondent No. 1 In Writ Petition)
3. Pharmacy Council Of India Through Its Registrar - Cum - Secretary , Combined Councils Building Kotla Road , Aiwan - E - Ghalib Marg New Delhi - 110002 , (Respondent No 4 In Writ Petition)

4. Chhattisgarh Swami Vivekanand Technical University , Through Its Registrar, North Park Avenue , Sector 8, Bhilai , District Durg Chhattisgarh. 490009 (Respondent No. 5 In Writ Petition)

---- Respondent

For Appellant/AICTE	Shri Sandeep Dubey, Advocate
For respective respondents	Shri Manoj Paranjape, Shri Kshitij Sharma & Shri Varun Sharma, Advocates
For Respondent/CSV TU	Shri Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

By

Prashant Kumar Mishra, J.

10/05/2018

1. The All India Council for Technical Education (for brevity 'the AICTE') is aggrieved by the impugned common order rendered by the Single Judge quashing the orders of rejection dated 4-4-2018, whereby the AICTE has refused the writ petitioners/institutions to open new Pharmacy Colleges for opening Degree and/or Diploma courses.
2. While in WA No.482 of 2018 the writ petitioner Holistic Foundation, Durg, desires to open the college in District Durg, in WA Nos.483 & 484 of 2018 the writ petitioners J.K. Institute of Pharmaceutical Educational & Research and Ayush College of Pharmacy desire to open two colleges at different locations within the Bilaspur District. There being no dispute about the manner in moving the application for grant of approval before the AICTE nor there being any dispute alleging that the writ petitioners

lack any basic infrastructure, as required in the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2016 (for brevity, 'the Regulations, 2016'), we shall only advert to the core issue involved in the writ petitions.

3. To be precise, the letter of rejection in the case of Holistic Foundation, did not mention any specific reasons for rejection, only mentioning NOC present, but not accepted. In two other cases of J.K. Institute of Pharmaceutical Educational & Research and Ayush College of Pharmacy, in the letter of rejection there is an endorsement in handwriting mentioning '*DTE NOC Presented, as per DTE letter (perspective plan) and Regional Committee decision*'.
4. Before the writ Court, the writ petitioners challenged the rejection on the ground that in accordance with Regulation 4.18 of the Regulations, 2016, no views of the State Government have been forwarded and further that reliance placed by the AICTE upon the perspective plan is misplaced because the State Government has not made any recommendation that approvals for courses of Bachelor in Pharmacy and Diploma in Pharmacy should not be granted in districts where Pharmacy College already exists.
5. Rejecting the defence taken by the AICTE, the learned Single Judge has concluded that para 4.18 of the Regulations, 2016 enjoins the AICTE to call for a report or views from the State Government and further the

perspective plan nowhere prohibits opening of new pharmacy colleges in the districts where pharmacy colleges are already in existence.

6. Shri Sandeep Dubey, learned counsel appearing for the appellant, would submit that the impugned order is a result of complete misreading of clause 4.18 of the Regulation, 2016 read with clause 1.4.7 of the Approval Process Handbook 2018-19. Shri Dubey would also submit that the decision taken by the expert body has wrongly been interfered.
7. On the other hand, Shri Manoj Paranjape, Shri Kshitij Sharma & Shri Varun Sharma, Advocates, appearing for the respective respondents, would submit that the rigor of Regulation 4.18 of the Regulations, 2016 has rightly been interpreted and applied by the learned Single Judge and that perspective plan does not have primacy over the AICTE Regulations.
8. Shri Anumeh Shrivastava, learned counsel appearing for the CSVTU, would submit that the University has already issued the NOC to the writ petitioner institutions subject to conditions enumerated therein.
9. We have heard learned counsel appearing for the parties at length.
10. To dwell on the rival submissions, it would be apt to reproduce clause 4.18 of the Regulations, 2016 and clause 1.4.7 of the Approval Process Handbook 2018-19 :

Regulations, 2016 :

“4.18 The State Government/UT Administration and the Affiliating University/Board shall forward their views on the applications received under Clause 4.1 as applicable, with valid reasons along with the perspective plan of the State, within a period of 21 days from the date of receipt of applications which shall be taken into account by the Regional Committee for further processing for grant of approval. If the application is not processed further, the processing fee after a deduction of 50000/- (Rupees Fifty thousand only) shall be refunded to the applicant. If the views of the State Government/UT Administration and the Affiliating University/Board are not received within a prescribed time schedule as mentioned in the Approval Process Handbook, it shall be presumed that they do not have any objection and the Council shall proceed further for processing of applications. However, the Council shall consider the previous communications, if any, received from the State Government/UT administration, the Affiliating University/Board against any Institutions.”

Approval Process Handbook 2018-19

1.4.7 Views of State Government/UT and Affiliating University/Board :

a. The State Government/UT and the Affiliating University/ Board shall forward to the concerned Regional Office of the Council, their views on the application received by them, within a period of 21 days from the date of receipt of the application of an Institution with valid reasons or otherwise along with the Perspective Plan of the Concerned State Government/UT and in any case, not later than the last date of submission of application as per the prescribed schedule of AICTE. Perspective Plan provided by different States/UTs shall be displayed in the AICTE Web-Portal.

b. Based on the Perspective Plan of the Concerned State Government/UT, if any State Government/UT has not given the NOC for setting up of new Institution, the Scrutiny/ Re-Scrutiny Committee shall reject the application. If the application is not processed further, the TER

Charges after a deduction of ₹ 50000/- (Rupees Fifty thousand only) shall be refunded to the Applicant.

c. In the absence of receipt of views from the State Government/UT and/or the Affiliating University/ Board on the application of an Institution, the Council shall proceed for further processing.

11. In the perspective plan of Technical Education prepared by the State of Chhattisgarh, it was recommended that approvals for Diploma Pharmacy and Bachelor of Pharmacy may be granted in districts, which do not have Pharmacy colleges.
12. It appears, considering the perspective plan, the Regional Committee recommended for further processing for establishment of only new pharmacy institutions in those districts where no pharmacy institution existed in the State of Chhattisgarh.
13. A plain reading of the perspective plan would indicate that it does not prohibit opening of new colleges in districts where there already exists pharmacy colleges. The learned Single Judge has also taken this view that the Regional Committee has unnecessarily read the prohibition in the perspective plan when there was no such language used in the perspective plan of the State Government.
14. That apart, the Supreme Court in **Jaya Gokul Educational Trust v Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another**¹ has

¹ (2000) 5 SCC 231

held that the State could not have any policy outside the AICTE Act. Preparation of the perspective plan by the State was no doubt directed by the Supreme Court itself in **Jaya Gokul Educational Trust** (supra), however, that is not the end of the word for AICTE as the issue concerning approval for opening of new colleges or increase in intake capacity lies within the exclusive domain of the AICTE and the State Government's perspective plan is not binding on the AICTE. If such perspective plan is held to be binding on the AICTE, it would amount to abdication of the functioning by the AICTE, which is not permissible under the extant Regulations.

15. Albeit the perspective plan may have its own guidance or persuasive value but where rejection of application is based only on the perspective plan without considering the issue that the institutions possess all the necessary infrastructure in terms of the Regulations, 2016, the decision would amount to arbitrary exercise of power *de hors* the AICTE Regulations. We say the decision to be arbitrary because the perspective plan itself has not used any such language, which has been read by the Regional Committee while passing the resolution to reject the application seeking approval.
16. We also feel appropriate to notice that under clause 4.18 of the Regulations, 2016 itself the State Government is required to forward its views, but if the views of the State Government and the affiliating University are not received within the prescribed time schedule, as

mentioned in the Approval Process Handbook 2018-19, it shall be presumed that they do not have any objection and the Council shall proceed further for processing of applications. In such case, the Council shall consider the previous communications, if any, received from the State Government and the affiliating University against any institutions.

17. In the case at hand, the State Government has not forwarded its views against the petitioner institutions either apropos the perspective plan or in relation to the required infrastructure, therefore, the State Government itself has not interpreted the perspective plan in the manner read by the Regional Committee. The State Government being the author of the perspective plan, it was open for them to have opined by sending negative recommendation that the State Government does not want the new colleges to be opened in such districts where the pharmacy college is already in existence, however, the State Government has chosen to remain silent in the matter, which amounts to no objection.
18. Moreover, the affiliating University has already issued the NOC, as stated by its counsel before the writ Court as also in these appeals. Thus, neither the State Government nor the University has any objection against the petitioner institutions for opening colleges in Durg & Bilaspur districts where pharmacy college is already in existence.
19. In so far as the objection to the finding recorded in para 31 of the impugned order passed by the learned Single Judge that it is not the

AICTE's obligation to seek views from the State, but the same is required to be sent by the State Government to the AICTE within 21 days from the date of receipt of copy of the application from the institution, learned counsel for the appellant appears correct in his submission because a conjoint reading of clause 4.18 of the Regulations, 2016 read with clause 1.4.7 of the Approval process Handbook 2018-19 makes it apparent that forwarding of views is an obligation of the State Government within 21 days after receipt of the copy of the application. The said part of observation made by the learned Single Judge is set-aside, however, the learned Single Judge has rightly allowed the writ petitions preferred by the institutions.

20. As a sequel, all the writ appeals, *sans substratum*, are liable to be and are hereby dismissed. There shall be no order as to costs.
21. The interim order passed earlier stands vacated. It is expected of the AICTE that all follow up actions will be expeditiously taken within the stipulated period.
22. Certified copy by tomorrow.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma