

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE T. AMARNATH GOUD

+ W.P.NO.31293 of 2017

% Date: 02-02-2018

Between:

1. Sangam Lasmibai Vidyapeet, Vinaynagar, Santoshnagar
Crossroads, Saidabad, Hyderabad – 500059, Telangana rep. by its
Secretary, Shri Rama Reddy.
2. Bojjam Narasimhulu Pharmacy College for Women, Vinaynagar,
Santoshnagar Crossroads, Saidabad, Hyderabad – 500059,
Telangana rep. by its Secretary, Shri Ram Reddy.
3. Shri Ram Reddy S/o. Late Shri Bhoj Reddy, R/o. H.No.3-5-43/B,
Ramkote, Hyderabad – 500 001, Telangana

... Petitioners

And

1. Jawaharlal Nehru Technological University Hyderabad (JNTUH),
rep. by its Registrar, Kukatpally, Hyderabad – 500 085, Telangana.
2. The State of Telangana, rep. by its Principal Secretary, Higher
Education Department, Secretariat Buildings, Hyderabad.
3. Pharmacy Council of India (PCI), rep. by its Secretary, Combined
Councils Building, Kotla Road, Aiwan-e-Ghalib Marg, New Delhi –
110 002.

... Respondents

! Counsel for the Petitioners

: Mr. Tarun G. Reddy

^ Counsel for Respondent No.1

: Mr. A. Abhishek Reddy S.C.

^ Counsel for Respondent No.2

: G.P. for Higher Education (T.S)

^ Counsel for Respondent No.3

: Mr. K. Lakshman A.S.G.

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? Cases referred

1. (2005) 3 SCC 212

2. (2006) 9 SCC 1

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD

W.P.NO.31293 of 2017

ORDER: (per VRS,J.)

Aggrieved by the rejection of their request for the grant of a No Objection Certificate to start Pharm-D course in the 2nd petitioner-institution for the academic year 2018-19, the educational agency and the college have come up with the above writ petition.

2. Heard Mr. Tarun G. Reddy, learned counsel for the petitioners, Mr. A. Abhishek Reddy, learned Standing Counsel for the 1st respondent-University, the learned Government Pleader for Higher Education (Telangana) and Mr. K. Lakshman, learned Assistant Solicitor General appearing for the 3rd respondent-Pharmacy Council of India.

3. The petitioners submitted an application on 26.08.2017 to the 3rd respondent (Pharmacy Council of India) for the grant of approval for starting a Pharm-D course for the academic year 2018-19. The Pharmacy Council of India insisted on the production of a No Objection Certificate from the 1st respondent-University. Therefore, the petitioners applied to the 1st respondent-University. But by a letter dated 19.08.2017, the 1st respondent refused to grant a No Objection Certificate on the ground that there was a Government policy, not to grant NOC for new institutions and new courses. Challenging the said communication and also challenging a Regulation 5.2, 5.3 and 6 of the JNTU Affiliation Procedure and Regulations, 2017, the petitioners have come up with the above writ petition.

4. The 1st respondent-University has filed a counter affidavit contending inter alia that as per AICTE Regulations and University Regulations, a college seeking to start a new course is obliged to seek a No Objection Certificate from the affiliating University; that the same is also in consonance with Section 20 of the Telangana Education Act, 1982; and that the Government of Telangana, after taking into consideration the local needs of the State, has decided that the number of institutions offering Pharm-D programme far exceeds the actual requirement, resulting in a number of seats going vacant. The University also contends that the validity of Section 20 of the A.P. Education Act (which is now adapted in the State of Telangana) was upheld in Government of Andhra Pradesh v. J.B. Educational Society¹ and that therefore, the impugned communication was perfectly in order.

5. The Government of Telangana has filed a counter affidavit contending inter alia that for the academic year 2017-18, the Government took a policy decision and requested the AICTE by a letter dated 29.11.2016 to declare a holiday on the establishment of new technical institutions from the academic year 2017-18 onwards; that this policy decision was based upon the details of the large number of technical institutions available in the State, wherein even the available seats are lying vacant; that the addition of more seats and more colleges will adversely impact the quality of education in the existing institutions making them financially unviable; that the fall in standards may also add to the low employability of the students; that the Government had also prepared a "Perspective Plan" of technical education in the State and communicated the same to the AICTE, New Delhi vide letter dated

¹ (2005) 3 SCC 212

30.10.2017 for declaring a holiday on the establishment of new technical institutions for the academic year 2018-19; that the Perspective Plan is in consonance with Section 20 of the Telangana Education Act, 1982 and that therefore, the refusal of the university to issue No Objection Certificate was in order.

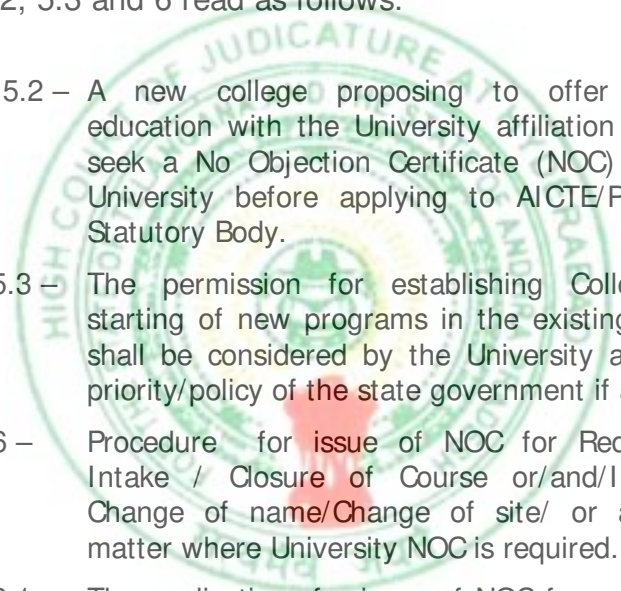
6. We have carefully considered the rival contentions.

7. At the outset it should be pointed out that we are concerned in this writ petition only with the issue of No Objection Certificate for starting a new course in an existing college from the academic year 2018-19. This is only the first step or first layer in a series of steps or layers to be gone through by the petitioners. If a No Objection Certificate is granted for starting a new course, the institution is obliged to make applications to AICTE and Pharmacy Council of India for necessary approvals. These approvals will be granted only after an inspection of the infrastructure available in the institution and the availability of prescribed number of qualified faculties. Once the second step of getting approvals from AICTE/ Pharmacy Council of India is passed, the institution should approach the University for affiliation and satisfy the university about the existence of necessary infrastructure and availability of qualified faculties to get affiliation. After this third step is crossed, the Convenor for admission into professional courses will include the institution in the general counselling for admission.

8. Therefore, the grant of No Objection Certificate is just like an entry pass required at the outer gate. A No Objection Certificate by itself will not enable an institution to start a course, as they have to pass through several check posts thereafter.

9. Keeping the above in mind, we have to see whether the University and Government are justified in refusing to grant No Objection Certificate on the sole ground that even the existing institutions are unable to find students and that a lot of seats in approved institutions go begging.

10. In view of the fact that the University refused to grant a No Objection Certificate, the petitioners, apart from challenging the communication dated 19.08.2017, have also challenged Regulations 5.2, 5.3 and 6 of the JNTU Affiliation and Procedure Regulations, 2017. Regulations 5.2, 5.3 and 6 read as follows:

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- “5.2 – A new college proposing to offer technical education with the University affiliation shall first seek a No Objection Certificate (NOC) from the University before applying to AICTE/PCI/ other Statutory Body.
 - 5.3 – The permission for establishing Colleges and starting of new programs in the existing Colleges shall be considered by the University as per the priority/policy of the state government if any.
 - 6 – Procedure for issue of NOC for Reduction of Intake / Closure of Course or/and/Institution/ Change of name/Change of site/ or any other matter where University NOC is required.
 - 6.1 – The applications for issue of NOC for reduction of intake/closure of Courses or/and Institution/ Change of name/change of site/ or any other matter where University NOC is required shall be accompanied by the resolution from Society/Management.
 - 6.2 – The same may be placed before the Governing Body and the minutes of the Governing body shall be enclosed with the application.
 - 6.3 – The details of number of students on rolls in the previous years and those who are trailing due to failures / detention, shall be clearly provided in the said application.
 - 6.4 – An undertaking on stamp paper as per the format given in Annexure-9, for continuation of infrastructural and other facilities for existing students and scheme for protecting the services of faculty as per service rules framed by the College, in case the reduction of intake / closure of course and/or Institution/change of name/change of site/

or any other matter where University NOC is required involves termination of faculty.”

11. Regulation 5.2 requires a new college proposing to offer technical education, to first seek a No Objection Certificate from the University. This regulation does not apply to the petitioners, since the 2nd petitioner is a pre-existing institution. They merely propose to offer a new course. Hence there is no necessity for the petitioners to challenge Regulation 5.2.

12. Regulation 5.3 requires the University to consider a request for permission to start a new programme in an existing college, as per the policy of the State Government. Regulation 6 merely prescribes the procedure for making an application for the issue of a No Objection Certificate. Therefore, the catch is in Regulation 5.3 and not in Regulation 6. Hence, the challenge to Regulation 6 is unnecessary.

13. Regulation 5.3 making it mandatory for the University to consider an application for starting a new course as per the policy of the State Government, cannot be said to be arbitrary. As rightly contended by the learned Government Pleader and the learned Standing Counsel for the University, the Government is ordained with a role under Section 20 of the A.P. Education Act. This provision has been upheld by the Supreme Court in *Government of A.P. v. J.B. Educational Society*. Therefore, we do not think that Regulation 5.3 can be said, *per se*, to be arbitrary and illegal. Hence we do not accept the contention that Regulations 5.2, 5.3 and 6 are illegal.

14. That takes us to the core issue as to whether the policy taken by the Government not to allow new courses to come up, has any rational basis or not?

15. It is claimed in the counter affidavit filed by the Government that every year from 2014-2015, a lot of seats in Pharm-D course go unfilled. The statistics furnished in the table given in para-7 of the counter affidavit of the State reads as follows:

STATUS OF ADMISSIONS INTO PHARM-D COURSE

Sl.No.	Year	No. of Colleges Affiliated by the University concerned	Total seats	Total seats filled	Vacant seats
1	2014-15	47	1410	1173	237
2	2015-16	48	1440	1337	103
3	2016-17	52	1560	1435	125
4	2017-18	56	1630	1457	173

16. A close look at the statistics furnished by the State Government would show that the number of vacant seats was the highest in 2014-15 and lowest in 2015-16. The fact that a number of seats go vacant, by itself cannot be a factor for refusing permission to start a new course or new institution. In fact, the power conferred upon the competent authority under Section 20 of the Telangana Education Act, 1982 is coupled with a corresponding obligation first to conduct a survey to identify the educational institutions of the locality under the jurisdiction of the competent authority. Section 20 does not give a blanket licence for the Government to declare a holiday merely on the ground of a few seats going vacant. The table given above shows that the number of seats that fell vacant in the academic year 2014-15 constituted more than 15% of the total number of seats. Yet affiliation was granted to one more college, after which the percentage of vacant seats fell below 10%. For the academic years 2015-16 and 2016-17, the percentage of seats that fell

vacant was nearly 8% of the total number of seats. In the academic year 2017-18, the percentage has increased to little over to 10%.

17. Section 20 of the Telangana Education Act, 1982 reads as follows:

“20. Permission for establishment of educational institutions: - (1) The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.

(2) In pursuance of the notification under sub-section (1), any educational agency including local authority or registered body of persons intending to -

- (a) establish an institution imparting education ;
- (b) open higher classes in an institution imparting primary education;
- (c) upgrade any such institution into a high school ; or
- (d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.)

may make an application, within such period in such manner and to such authority as may be notified for the grant of permission therefor.

(3) Any educational agency applying for permission under sub-section (2) shall, -

(a) before the permission is granted, satisfy the authority concerned, -

(i) that there is need for providing educational facilities to the people in the locality ;

(ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority ;

(iii) that the institution is proposed to be located in sanitary and healthy surroundings ;

(b) enclose to the application, -

(i) title deeds relating to the site for building, playground and garden proposed to be provided ;

(ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefor ; and

(iii) documents evidencing availability of the finances needed for constructing the proposed buildings ; and

(c) within the period specified by the authority concerned in the order granting permission, -

(i) appoint teaching staff qualified according to the rules made by the Government in this behalf ;

(ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees :

Provided further that the Court convicting a person under this section shall also order the closure of the institution with respect to which the offence is committed."

18. All that is required to be satisfied by an educational agency seeking permission under Section 20 (3) is to show that there is need for providing educational facilities to people in the locality and that there is adequate financial provision and continued efficient management of the institution and that the institution is proposed to be located in sanitary and healthy surroundings.

19. Section 20 shows that the Government has to examine the issue on a case to case basis. Section 20 does not confer power upon the Government to declare a holiday. In any case, the Government cannot declare a holiday on the ground that lot of seats are going vacant.

20. Fortunately or unfortunately, running an educational institution has actually become an industrial activity in a free market economy. Therefore, if many seats go vacant, the educational institutions themselves will automatically shut down courses for which there is no

demand. Unless the starting of a course or running of an existing course is economically viable, no educational agency would take up the venture. After all, the days when educational institutions were run on charitable lines, have long gone and hence the fact that the number of seats fall vacant can be a cause for the educational agency to worry and not a cause for the Government to worry.

21. One of us (VRS,J) had an occasion to point out in one of the cases that came up in the previous academic year that there are several layers of rejection of an institution or a course. *If the rejection by expert bodies like AICTE, Medical Council of India etc., constitute one type of rejection, the rejection by the Universities to which affiliation is sought constitutes a second category of rejection. A number of seats going vacant in a college is an indication that there is social rejection (rejection by parents and/or students) which constitutes the third category of rejection.* Therefore, the Government need not be concerned about a number of seats going vacant in a particular course, unless it is in respect of a college run by the Government or a college run with the aid provided by the Government.

22. In the counter affidavit filed by the Government, a concern is expressed that *if the supply and demand do not match, it leads to the problem of unemployment. But we cannot shy away from reality. Allowing new courses and new institutions to come up may perhaps create a breed of educated unemployed rather than a breed of uneducated unemployed.* In fact, a section of the uneducated unemployed will at least find a course of a duration of 3 to 4 years where their energies can be channelised.

23. Along with the counter affidavit, the Government have enclosed a set of documents. The first document is a letter dated 29.11.2016 sent by the Government to AICTE communicating the views of the State Government regarding AICTE approval procedure for the year 2017-2018. The Government have expressed in the said letter, a serious concern at the proliferation and establishment of technical institutions and the unprecedented expansion in the intake in all the courses during the last 10 years. The said letter of the Government contains six tables containing statistics about (i) growth of technical institutions in the State from 2007-2008 to 2016-2017; (ii) approved professional colleges with year wise intakes; (iii) vacancy position in Engineering, Pharmacy, MBA and MCA courses during the years 2015-2016 and 2016-2017; (iv) correlation between those appearing for higher secondary examination with Mathematics background and the availability of undergraduate seats in technical education District wise; (v) imbalance in the number of seats available in I.T related disciplines and conventional disciplines; and (vi) non-uniform distribution of technical institutions and intake among the districts in the state.

24. But none of these statistics furnished in any of the six tables relate to Pharm-D course. There are statistics in general relating to B-Pharm. The focus of the statistics was mostly on engineering education. Therefore the contents of the letter of the Government dated 29.11.2016, have no relevance to the issue on hand.

25. The second document annexed to the counter affidavit filed the Government is a letter dated 30.10.2017 sent by the Government to the AICTE. To this letter the Government had attached a "Perspective Plan" for 2018-2019. A close look at the Perspective Plan sent by the

Government to AICTE shows that there are 123 colleges in 31 Districts of the State of Telangana, offering B-Pharm courses. The total number of seats offered by them for the year 2016-2017, were 9226 and enrolment was 7994. The number of seats offered for 2017-2018 was 9703 but the enrolment was 5742.

26. But insofar as M-Pharm course is concerned, the number of colleges that offered M-Pharm during the year 2016-2017 were 107, but it appears that 12 colleges went out of circulation leaving only 95 colleges for the year 2017-2018. The consequence was that the enrolment of students was 3396 out of a total of 4694 for the year 2016-2017, but the enrolment was 2533 out of a total of 2790 for 2017-2018. This shows that market forces sent a few colleges out of circulation.

27. Table 2 in the Perspective Plan which contains statistics about approved professional colleges with year wise intakes shows that the number of pharmacy colleges in the State were 168 in the academic year 2013-2014, 168 in the academic year 2014-2015, 145 in the academic year 2015-2016, 123 in the academic year 2016-2017 and 129 in the academic year 2017-2018. Similarly the sanctioned intake in pharmacy courses has fallen from 14840 in the years 2013-2014 and 2014-2015 to 11490 in 2015-2016, 9226 in 2016-2017 and 9943 in 2017-2018.

28. While the statistics relating to engineering education present a dismal picture, the same is not the case with pharmacy. As a matter of fact there is an admission in the Perspective Plan in para 5 under the caption "TECHNICAL EDUCATION IN TELANGANA-ROAD MAP" under the heading "Pharmacy" that the registration for Pharm-D courses has increased. It will be useful to reproduce para-5(c) of the Perspective Plan for 2018-2019 as follows:

“c) PHARMACY

Sl. No.	Courses	2016-17			2017-18		
		Colleges	seats	vacant	Colleges	Seats	Vacant
1	Pharma-D & B. Pharmacy	47	1410	1173	125	7977	1218
2	M. Pharmacy	48	1440	1337	95	2790	257

The above table clearly illustrates that while enrolment in the M. Pharm, courses drastically reduced, student enrolment in the B. Pharm and Pharm-D courses have registered a marginal increase in the enrolment. Since the existing colleges are able to cater to the requirements, it is proposed not to sanction any new institutions in the next 2-3 years. (Add seats enrolment/vacant & 2015-16 figures)”

29. Therefore, apart from the fact that seats falling vacant cannot be a sole criteria for the refusal of a No Objection Certificate, the very Perspective Plan drawn by the State shows that the general trend related to engineering education does not apply to Pharm-D courses. Without even applying its mind to para-5(c) of the very Perspective Plan prepared by the State of Telangana for 2018-2019, the petitioners have been denied No Objection Certificate. Hence the impugned order also suffers from non-application of mind.

30. As rightly contended by Mr. Tarun G Reddy, learned counsel for the petitioners, the Supreme Court has already frowned upon the so called policy decisions of the State Governments, in its decision in *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya*². Though insofar as the State of Andhra Pradesh is concerned Section 20 of the AP Education Act, 1982 can still be pressed into service in view of the decision in *Government of AP v. J.B. Educational Society*, the same does not advance the cause of the respondents. As we have pointed out earlier, Section 20(3) of the A.P Education Act does not provide any scope for rejecting a No Objection

² (2006) 9 SCC 1

Certificate solely on the ground of a policy decision that was taken, merely on the basis of the number of seats falling vacant in a particular course. In fact even according to the Perspective Plan prepared by the Government, the enrolment of students for Pharm-D has registered a marginal increase over the years. Therefore, the only reason on which the Government took a policy decision runs contrary to their own statistics found in the Perspective Plan.

31. In view of the above, the writ petition deserves to be allowed. Accordingly it is allowed, directing the University to grant a No Objection Certificate. Thereafter, it will be open to the AICTE and Pharmacy Council of India (PCI) to examine whether the application of the petitioners for approval for starting a new course could be considered or not. In the event of AICTE and PCI granting approval, it will still be open to the first respondent University to examine with reference to its own Statutes, as to whether the petitioner could be granted affiliation or not.

32. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

T. AMARNATH GOUD, J.

2nd February, 2018
Js

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD

W.P.NO.31293 of 2017

(per VRS, J.)



2nd February, 2018

Js.