

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

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

+Writ Petition No.33469 of 2017

% 02-02-2018

Between:

Muslim Education Social & Cultural Organization
(MESCO) H.No.22-1-1037/1, Darul Shifa, Hyderabad
Represented by its Secretary Dr. Fakhruddin Mohammed
and 2 others

... Petitioners

Vs.

The Convener, Telangana State EAMCET,
Admissions – 2017, Sankethika Bhavan,
Masab Tank, Hyderabad and 6 others

.. Respondents

! For Petitioners

: Mr. Vedula Venkata Ramana, Sr.
Counsel

^For Respondents

: Mr. A. Abhishek Reddy, for R-1
Mr. K. Laxman, Asst. Solicitor General
for R-2
Mr. M. Ramakanth Reddy for R-3
Mr. Ch. Jagannatha Rao for R-5

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

Writ Appeal No.33469 of 2017

ORDER: (V. Ramasubramanian, J)

Aggrieved by the refusal of the respondents to approve/ratify the spot admissions granted to 15 students to the B-Pharmacy course for the Academic Year 2017-18, the Educational Agency and the College have come up with the above writ petition.

2. Heard Mr. Vedula Venkataramana, learned senior counsel appearing for the petitioners, Mr. A. Abhishek Reddy, learned standing counsel for the 1st respondent, Mr. K. Lakshman, learned Assistant Solicitor General, appearing for the 2nd respondent, Mr. K. Ramakanth Reddy, learned standing counsel appearing for the 4th respondent and Mr. Ch. Jagannatha Rao, learned standing counsel appearing for the 5th respondent.

3. The 1st petitioner is an Educational Agency and they established the 2nd petitioner College in the year 2003 for imparting education in Pharmacy.

4. For the Academic year 2017-18, the 2nd petitioner college was granted approval by AICTE, by proceedings dated 30.04.2017, for conducting an Under Graduate Full Time Course in Pharmacy for a permitted intake of 100 students, subject to the 2nd petitioner getting affiliation from the University. Based on the said permission, the 2nd petitioner made applications on 05-05-2017 to the Commissioner of Technical Education, Telangana State, the

Osmania University and to the Convener for Telangana State EAMCET-2017.

5. In response to the application so made, the Commissioner of Technical Education sent a reply dated 06-06-2017, directing the 2nd petitioner to produce the orders of affiliation.

6. Simultaneously, the 2nd petitioner also applied to the Pharmacy Council of India for approval. The Pharmacy Council of India, by a communication dated 12-06-2017 forwarded the observations made during the 5th inspection of the College in May, 2017 and called upon the 2nd petitioner to file a compliance report. After the 2nd petitioner submitted a compliance report, the Pharmacy Council of India hosted in their website the list of institutions approved for the conduct of certain courses of study. The Pharmacy Council of India also sent a communication to the 5th respondent University on 31-07-2017 clarifying that the Pharmacy Council had no objection to the consideration of admission to various Pharmacy courses unless the Council has (1) rejected the application; (2) issued notices for withdrawal of approval; (3) finally withdrawn approval under section 13; and (4) advised the institution not to make admissions.

7. In the meantime, the petitioners came up with a writ petition in W.P.No.26806 of 2017 seeking a direction to the 5th respondent-University to grant affiliation for an intake of 100 students. When the writ petition came up for orders as to admission on 11-08-2017, the letter issued by the Pharmacy Council of India dated 31-07-2017 was produced. Therefore, the learned counsel appearing for the

University conceded before this Court on 11-08-2017 when W.P.No.26806 of 2017 came up for admission that the University was prepared to grant affiliation on the basis of the conditions stipulated by the Pharmacy Council of India in their letter dated 31-07-2017. Hence, this Court passed an interim order on 11-08-2017 directing the University to consider the letter of the Pharmacy Council dated 31-07-2017 and to pass orders.

8. On 22-08-2017 when the W.P.No.26806 of 2017 again came up for orders as to admission, the learned standing counsel for the University stated that by a letter dated 12-08-2017, the University had granted affiliation for an intake of 100 students subject to the approval of the Pharmacy Council of India and the permission of the Government of Telangana. Therefore, an interim order was passed on 22-08-2017 indicating that the 2nd petitioner will be free to fill up 30 seats, representing 30% of the permitted intake, which fell to the share of the management. It was also recorded that the Convener for TS EAMCET had allotted 42 students out of 70 seats that fell to the share of the Convener.

9. It appears that pursuant to the aforesaid interim orders, the 2nd petitioner not only admitted 30 students under the 30% quota reserved for the management, but also admitted 8 students in respect of the vacancies created due to the non-joining of the 8 students allotted by the Convener. In addition, they also admitted 15 more students by way of spot admissions. In other words, the 2nd petitioner admitted a total of 87 students, out of which 34 were allotted by the Convener, EAMCET, 8 were admitted by the 2nd

petitioner in the vacancies created due to the non-reporting of the 8 out of 42 students allotted by the Convener and 45 admitted by the 2nd petitioner.

10. But to the misfortune of the 2nd petitioner, the Pharmacy Council of India eventually granted approval only for a permitted intake of 60 students. As a result, the University has refused to recognize the admission granted to 15 students, who were admitted over and above what was permitted by this Court by the interim order dated 22-08-2017. Hence, the petitioner has come up with the above writ petition, challenging the refusal of the University to approve/ratify 15 spot admissions made by the petitioner to B-Pharmacy course for the academic year 2017-18.

11. The contention of Mr. Vedula Venkataramana, learned senior counsel appearing for the petitioners is two fold, namely (a) that once AICTE had granted approval for an intake of 100 students, it is not open to the Pharmacy Council of India to restrict the approval to 60 students, and (b) that when there are no complaints about the procedure adopted by the 2nd petitioner to admit students, it is not open to the University to refuse approval of admission of 15 students alone.

12. However, Mr. Ch. Jagannatharao, learned standing counsel appearing for the University contended that the University granted approval by order dated 12-08-2017 for the admission of 100 students on condition that the petitioners secure the approval of the Pharmacy Council also for a permitted intake of 100 students and that since the petitioners could not secure the approval of the

Pharmacy Council for a permitted intake of 100 students, the affiliation granted by the University can be restricted only to 60. However, in view of the interim order passed by this Court in W.P.No.26806 of 2017, the University has granted approval for a total of 72 students. Hence, the learned standing counsel for the University contended that the writ petition deserves to be dismissed.

13. Mr. K. Ramakanth Reddy, learned standing counsel for AICTE and Mr. K. Lakshman, learned Assistant Solicitor General, representing the Pharmacy Council of India submitted that the legal issue as to whether AICTE or Pharmacy Council of India has the final authority, is now pending adjudication before the Supreme Court and that therefore, it would be better to restrict the admissions to the minimum intake as approved by either of the two bodies.

14. Mr. A. Abhishek Reddy, learned standing counsel for the Convener, EAMCET contended that irrespective of the conflict as to who among the AICTE and Pharmacy Council of India is supreme, the petitioner was bound by the interim order of this Court and that they ought not to have admitted students in excess of at least 72 students.

15. We have carefully considered the above submissions.

16. Before taking of the core issues arising for consideration, we would, for the purpose of convenience, record the timeline of events, in the background of which the legal issues are to be addressed. The timeline is as follows:

(a) by a communication dated 30-04-2017, AICTE granted approval to the petitioner College for running one shift of Undergraduate

courses in Pharmacy for an approved intake of 100 students with affiliation to the Osmania University, for the Academic Year 2017-18;

(b) by a communication dated 12-08-2017, the University granted affiliation for a permitted intake of 100 students, subject, however, to the approval of the Pharmacy Council of India;

(c) by interim orders passed on 11-08-2017 and 22-08-2017, this Court permitted the petitioner to fill up 30 seats falling under the management quota, in view of the submission made by the University that they had granted affiliation for an intake of 100 students and that the Convener had allotted 42 students; and

(d) by an information hosted in the website of the Pharmacy Council of India subsequently, (date not known), it was made known that the Pharmacy Council of India granted approval only for an intake of 60 students.

17. In the light of the above timeline of events, the controversy has now narrowed down to only one issue viz., as to whether the Pharmacy Council of India can grant approval only for an intake of 60 students, when the AICTE had granted approval for an intake of 100 students.

18. Reliance is placed by Mr. Vedula Venkataramana, learned senior counsel appearing for the petitioners, on a decision of the Madras High Court in **A. Mahesh, v. K.K. College of Pharmacy**¹ and on the decision of the Bombay High Court in **Shri Bhairavnath Nisarga Mandal's College of Pharmacy (D. Pharm) v. the State of Maharashtra** (W.P.No.10027 of 2016 dated 06-07-2017), in

¹ 2003 (4) CTC 657

support of his contention that since the All India Council for Technical Education Act, 1987 (AICTE) is a subsequent Parliamentary Enactment to the Pharmacy Act, 1948, the former will prevail over the latter and that in terms of Article 372 of the Constitution, the provisions of the Pharmacy Act should yield to the AICTE Act, in respect of matters covered by the AICTE Act.

19. It is true that the Pharmacy Act, 1948 is a pre-Constitution enactment, which got adapted, under the Adaptation of Laws Order, 1950. It is also true that AICTE Act, 1987 is a post-constitutional Parliamentary Enactment and the law is well settled that the Parliament should be deemed to be fully conscious of the existence of the Pharmacy Act, 1948, when it enacted the AICTE Act.

20. In **A. Mahesh**, the question that arose before a learned single Judge of the Madras High Court was whether approval from the Pharmacy Council of India was necessary to impart education in Pharmacy Degree course, after coming into force of the AICTE Act. This can be seen from para-6 of the judgment of the Madras High Court. After going into the provisions of the Pharmacy Act, 1948 and the AICTE Act, 1987, the learned Judge of the Madras High Court came to the conclusion in paragraph 11 of his decision that while the Pharmacy Act is an enactment which occupied the field of regulating the profession of pharmacy, AICTE Act was enacted with a view to proper planning and coordinated development of Technical Education and the regulation and proper maintenance of norms and standards in Technical Education.

21. The Madras High Court thereafter held that since both the Acts lay down norms and standards for courses of study in Pharmacy and since AICTE is a latter enactment referable to Entry 66 of List-1 of the VII Schedule to the Constitution, the provisions of AICTE Act will prevail over that of the Pharmacy Act, 1948.

22. In so far as the decision of the Division Bench of the Bombay High Court in **Shri Bhairavnath Nisarga Mandal's College of Pharmacy (D. Pharm) v. the State of Maharashtra** is concerned, the same pertained to the registration of a group of students with the Pharmacy Council of India as Pharmacists, after they had completed the degree course in Pharmacy. The Bombay High Court did not go into a great detail, but took note of the pendency of the issue of the supremacy before the Supreme Court and granted relief to individual students.

23. However it appears that after the decision of the Madras High Court in **A. Mahesh** but before the decision of the Bombay High Court in **Shri Bhairavnath Nisarga Mandal's College of Pharmacy (D. Pharm)**, the Ministry of Human Resources Development of the Government of India worked out an agreement in April 2016, between AICTE and Pharmacy Council of India to settle the regulatory discord. As per the agreement reached, the AICTE was obliged to mandatorily incorporate Pharmacy Council of India norms and standards in their Approval Process Handbook. Existing institutions were also directed by the said agreement to be inspected by the officials of both AICTE and Pharmacy Council of India. It is not known whether the said procedure was followed in this

case before AICTE granted approval to the 2nd petitioner on 30-04-2017 for an intake of 100 students. Be that as it may, we have our own doubts about the interpretation given by the Madras High Court in **A. Mahesh**.

24. Despite the fact that AICTE Act, 1987 is a subsequent enactment, traceable to Entry 66 of List 1 of the VII Schedule to the Constitution, the said Act is a comprehensive one, which deals with all branches of Technical Education such as Engineering, Technology, Architecture, Town Planning, Management, Pharmacy and Applied Arts and Crafts, as can be seen from the definition in Section 2 (g) of the AICTE Act, 1987. But Pharmacy Act, 1948 is a special enactment with particular focus only on the branch of Pharmacy.

25. Under Section 10 (1) of the Pharmacy Act, 1948, the Central Council is empowered to make regulations, subject to the approval of the Central Government, prescribing the minimum standard of education required for registration as a Pharmacist. These regulations known as "Education Regulations", may prescribe, in view of Section 10(2) of the Act, the nature and period of study, the practical training to be undertaken before admission to an examination, the equipment and facility to be provided for students undergoing approved courses of study, the subjects of examination and standards to be attained and their conditions of admission to examinations.

26. As a matter of fact, sub-section (3) of Section 10 requires the copies of the draft of the Education Regulations to be furnished

to all State Governments inviting their comments before the regulations are finalized and published in the Gazette. Section 10 of the Pharmacy Act reads as follows:

“10. Education Regulations.—

(1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe—

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations.

(3) Copies of the draft of the Education Regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under sub-section (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct.

(5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit.”

27. Section 12 (1) of the Pharmacy Act, 1948 requires every authority, which conduct a course of study for Pharmacists, to apply to the Central Council for the approval of the course. After examining whether the course of study is in conformity with the Education Regulations, the Central Council may declare the course of study to be an approved course of study for the purpose of admission to an approved examination for Pharmacists. Section 12 in entirety is regulatory in nature and hence, it is reproduced as follows:

“12. Approved courses of study and examinations.—

(1) Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the States which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination.”

28. Section 13 of the Act empowers the Central Council to withdraw the approval accorded to a course of study, if the Executive Committee submits a report that the course of study was not in conformity with the Education Regulations. Section 16 (2) of the Act empowers an Inspector appointed by the Executive Committee of the Central Council to inspect any institution, which provides an approved course of study.

29. Therefore, in the light of the specific powers conferred by the Pharmacy Act, 1948, especially under Sections 10, 12, 13 and 16, the Pharmacy Act 1948 should be taken to be a special enactment in so far as pharmacy is concerned. Consequently, the AICTE Act, 1987 is to be treated as a general enactment in so far as pharmacy is concerned, though in so far as engineering education is concerned, AICTE Act itself may be a special enactment.

30. Whenever the provisions of a special enactment are pitted against the provisions of a general enactment, the former will prevail. In such cases, the rule that the latter enactment would prevail over the former, will also give way to the rule that “the Special overrides the general”.

31. Therefore, we are of the considered view that while the role of the AICTE 1987 cannot be belittled, the role of the Pharmacy Council of India cannot also be diluted. If AICTE is of the opinion that an institution is entitled to approval for a particular intake, but the Pharmacy Council of India is of the opinion that an institution is entitled only to a lesser intake, the opinion of the Pharmacy Council of India should prevail. This is for two reasons namely (a) that the Pharmacy Act is a special enactment in so far as pharmacy is concerned; and (b) that eventually the students, who graduate from the colleges with a degree in pharmacy may have to go only to the Pharmacy Council of India and not to the AICTE for registration as Pharmacists, which is mandatory under the Pharmacy Act, 1948.

32. Therefore, we are of the considered view that the approval granted by the Pharmacy Council of India to the 2nd petitioner college for an intake of 60 students, will prevail over the order of the AICTE dated 30-04-2017 granting approval for a permitted intake of 100 students. The University had made it clear by its communication dated 12-08-2017 that the grant of affiliation for 100 students was subject to the approval of the Pharmacy Council of India. Therefore, the University cannot be found fault with.

33. Hence, in view of the foregoing, the 2nd petitioner college was entitled only to admit 60 students for B-Pharmacy course for the academic session 2017-18. But by virtue of the interim order passed by this Court on 22-08-2017, they were entitled to admit 72 students, 42 allotted by the Convener and 30 admitted under the management quota. The interim order was passed at a time when there was no

clarity on the stand taken by the Pharmacy Council of India and the last date for completion of the process of admission was hardly 9 days away. Therefore, while we may not be able to find fault with the petitioners for admitting 72 students, despite the Pharmacy Council of India granting approval subsequently only to an intake of 60 students, the admission made by the petitioners, of 15 students in excess of 72 permitted by this court by the interim order dated 22-08-2017, cannot at all be sustained. In such circumstances, the refusal of the University to grant approval for 15 students admitted by the petitioners in excess of what was permitted by the interim order dated 22-08-2017, is perfectly justified. Hence, the writ petition is liable to be dismissed.

34. But before doing so, we must also deal with the one last issue namely as to what should be done to 12 out of 72 students permitted by this Court by interim order dated 22-08-2017 to be admitted in excess of the permitted intake of 60. As we have pointed out earlier, the interim order dated 22-08-2017 permitting the management to fill up 30 seats, after the Convener had allotted 42 students, was passed at a time when Pharmacy Council of India had not taken a definite stand. On the date on which the interim order was passed, this Court was confronted with two orders, one by the AICTE dated 30-04-2017 and another by the University dated 12-08-2017 granting approval for an intake of 100 students. This is why this Court permitted the petitioners to fill up 30 seats that represented 30% of the permitted intake of 100. Hence, those 12 students, (in excess of the intake of 60 now permitted by Pharmacy

Council) cannot be penalised and sent out. As a matter of fact, the Osmania University has also granted approval for all the 72 students without keeping the fate of 12 students (in excess of 60) in suspense. We hope that the Pharmacy Council of India will follow suit and ratify the admission of these 12 students, in the light of the circumstances indicated above.

With the above observations, the writ petition is dismissed as devoid of merits. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. AMARNATH GOUD, J

Date: 02-02-2018

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