

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
906 WRIT PETITION NO.8421 OF 2018
WITH CA/2501/2019 IN WP/8421/2018**

ADITYA EDUCATION TRUSTS BEED ADITYA PHARMACY
COLLEGE AND RESEARCH THROUGH PRINCIPLE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. D. S. Bagul, Advocate for the Petitioner.

Mr. S. M. Ganachari, AGP for Respondent Nos.1 and 2.

Mr. S. V. Adwant, Advocate for Respondent No.3.

Mr. Sanjeev B. Deshpande, Advocate for Respondent No.4

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 13th FEBRUARY, 2019.

PER COURT:-

1. The petitioner assails the action of AICTE thereby reducing the intake capacity of the petitioner's 1st year B.Pharmacy course to 100 students for the academic year 2018-2019 from 180 students sanctioned for the year 2017-2018 and previous years.

2. Mr. Bagul, learned counsel for the petitioner submits that the petitioner-institution under the Government Resolution dated 14.07.2014 is granted approval to start the B.Pharma under graduate course with intake capacity of 180 students. Every year the approval was extended by the AICTE viz. the Apex Body. In the year 2014-

2015, the respondent no.2 without considering the approval granted by the AICTE as well as the approval granted by respondent no.1 for the intake capacity of 180 students did not permit the petitioner to participate in the CAP round. The petitioner as such filed writ petition no.5721 of 2014 before this Court and by way of an interim order the petitioner was protected and permitted to admit 180 students. For the academic year 2015-2016, the AICTE granted approval to the petitioner for intake capacity of 180 students. Again the respondent no.2 reduced the intake capacity. The petitioner filed writ petition bearing no.7324 of 2015 and the petitioner's intake capacity of 180 students was protected by virtue of an interim order considering that the Apex Body has granted approval for intake capacity of 180 students. For the year 2016-2017 also the same modality was adopted by respondent no.2 and the petitioner was protected. For the year 2017-2018 again the Apex Body granted approval to the petitioner for intake capacity of 180 students. The respondent no.2 reduced the intake capacity. Again this Court under order dated 28.07.2017 in Civil Application No.9952 of 2017 allowed the petitioner to admit 180 students in view of the approval granted by the AICTE for 180 students.

3. Mr. Bagul, the learned counsel further submits that for the academic year 2018-2019 the

AICTE published Approval Process Handbook 2018-2019 in the month of December 2017. In consonance with the Approval Process Handbook the petitioner submitted online application Part-I and Part-II seeking extension of approval for the academic year 2018-2019. The forms prescribed therein contains the details to be furnished of the infrastructure facilities available with the institution which includes land norms, administrative and instructional norms, amenities and circulation norms, with additional facilities like computational, library and others as per the prescribed norms of the AICTE Approval Process Handbook 2018. After receipt of the application from the petitioner, the AICTE verified the details submitted in Part-I and Part-II of application form and in the deficiency report it is clarified by AICTE that no single deficiency is observed. It is a case of zero deficiency. The respondent-AICTE though found that not a single deficiency exists granted approval for intake capacity of 100 students as against 180 students which was granted every year. The learned counsel submits that the application was only for extension of approval and not for a fresh permission. It was an online process and the respondent ought to have granted intake capacity for 180 students as applied by the petitioner and more particularly no deficiency existed.

4. The learned counsel submits that the AICTE is the Apex Body and is supreme. The respondent no.2-Pharmacy Council of India does not have any right to regulate the intake capacity. It is only the AICTE that would regulate the intake capacity. The learned counsel relies on the order passed by the Apex Court in a case of **Orissa Technical Colleges Association Vs. AICTE.**

5. The learned counsel submits that the petitioner was required to make online application for extension of approval latest by 31st December 2017 for academic year 2018-2019. The position has existing on the said date would apply. The respondents are relying on the decision taken by them in its 113th Executive Meeting dated 6.03.2018. Under the said decision, the Rules are not amended. More over, the said decision would not apply retrospectively as all the process of making application for extension of permission for the required intake capacity was complete by 31.12.2017. The learned counsel to buttress his submissions relies on the judgment of the learned Single Judge of the Madras High Court in a case of **Srinivasa Institute of Engineering and Technology Vs. All India Council for Technical Education (AICTE) and Others** dated 30.06.2010. According to the learned counsel the learned Single Judge in the said case has held that the decision taken by the AICTE cannot have retrospective operation.

6. The learned counsel further submits that while reducing the intake capacity the respondent has not given opportunity of hearing to the petitioner, the same is violative. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Saraswati Education of Society's Saraswati College of Engineering, Kharghar, Navi Mumbai Vs. All India Council for Technical Education (AICTE), New Delhi and Others** reported in (2016) 1 Maharashtra Law Journal 235.

7. Mr. Adwant, learned counsel for the AICTE submits that conscious decision has been taken by the AICTE to limit the intake capacity to 100 students in case of B.Pharmacy course. In its 113th Executive Council Meeting dated 06.03.2018, the AICTE has taken a decision to work in tandem with Pharmacy Council of India. The policy decision has been taken by AICTE and this Court would not substitute its decision in place of the decision taken by the experts. It is prerogative of the expert body like AICTE to frame the policy with regard to the education. The learned counsel relies on the following judgments:

1. Mohd. Shujat Ali v. Union of India reported in (1975) 3 SCC 76.
2. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth reported in (1984) 4 SCC 27.

3. Delhi Pradesh Registered Medical Practitioners v. Delhi Admn., Director of Health Services reported in (1997) 11 SCC 687.

4. Basic Education Board, U.P. v. Upendra Rai reported in (2008) 3 SCC 432.

5. All India Council for Technical Education v. Surinder Kumar Dhawan reported in (2009) 11 SCC 726.

6. State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh reported in (2011) 6 SCC 597.

7. V. Lavanya v. State of T.N. reported in (2017) 1 SCC 322.

8. According to the learned counsel, the Court shall be reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters. The learned counsel submits that as far as academic or technical matters are concerned the Courts would not substitute its views in place of a statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. The judicial review in educational policy matters would not be resorted to by this Court.

9. Mr. Adwant, learned counsel further submits that the petitioner claims to have admitted 180 students pursuant to the interim orders passed by this Court in the present writ petition under

order dated 02.08.2018 and this Court while passing the interim order has observed that the students would not be entitled to claim any equity if they are admitted pursuant to the interim order of the Courts and the institution / petitioner was directed to intimate each and every student about the said factum. In view of that the petitioner and/or the students cannot claim any equity.

10. We have considered the submissions canvassed by the learned counsel for the respective parties.

11. It cannot be a matter of debate that the Courts are not equipped nor have the academic or technical background to substitute themselves in place of the statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. The Apex Court in a case of **Basic Education Board, U.P. v. Upendra Rai** (supra) has held that the role of statutory expert bodies on education and the role of Courts are well defined by a simple rule. If it is question of educational policy or an issue involving academic matter, the Courts keep their hands off. This Court while exercising its powers of judicial review would be cautious and would not interfere with the policy decision of the expert bodies unless such policy matters run counter to the mandate of the Constitution. The Apex Court in a case of

Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth (supra) has held that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the departments controlling them.

12. As is narrated supra, till the year 2017-2018 the AICTE granted extension of approval to the petitioner with an intake capacity of 180 students and it was Pharmacy Council of India that was limiting the intake capacity and every year on the basis of approval granted by the AICTE for an intake capacity of 180 students this Court has granted interim order and allowed the petitioner to admit 180 students.

13. For the academic year 2018-2019, the AICTE for the first time limited the intake capacity of the petitioner's institution to admit 100 students in B.Pharmacy course. The petitioner as such filed the instant writ petition. This Court under order dated 02.08.2018 (Coram: Shri. Prasanna B. Varale and Shri. S. M. Gavhane, JJ.) passed interim order and observed thus:

"Considering the facts which w have referred to earlier and considering the order of this

Court in Writ Petition No.5710 of 2018, dated 27th June, 2018, we see no reason to take a different view insofar as interim order is concerned. Accordingly, we direct the respondents to permit the petitioner institute to admit the students considering intake capacity of 180 students for regular seats of under graduate students for the academic course B Pharmacy. We are further making it clear that interim order passed would not create any equity in favour of the students so admitted and these admissions would be subject to final decision of the petition. The petitioner institute shall intimate each of the students admitted by way of interim order to that effect and their admission for under graduate course run in the college of the petitioner institute would be subject to final outcome of the petition."

14. It would appear that pursuant to the interim orders, the petitioner has admitted 180 students all from the CAP round and list of the students is forwarded by the Director of Technical Education as is contended by the petitioner. These students have almost completed one year.

15. The AICTE has taken a stand that now they have resiled to function in tandem with the Pharmacy Council of India and as such so as to avoid any further complication for the students it has been decided as a matter of policy by the AICTE not to grant permission to any institutions throughout the country to admit students more than 100 for B. Pharma Course.

16. As observed above, this Court is certainly

not an expert in the matters of education and as such we would not sit as an appellate authority over the decision taken by the experts of AICTE. However, the process of filing an online application for the extension of renewal was concluded by 31.12.2017 and the respondent has taken policy decision on 06.03.2018, so also considering that as far as the petitioner-institution is concerned it was a case of a zero deficiency or no deficiency. The petitioner is sanctioned intake of 100 students. The issue was only limited to the number of students to be admitted and this Court under the interim order quoted above had allowed the institution to admit 180 students who have also completed one year. We are exercising our jurisdiction for the academic year 2018-2019 only.

17. Considering all the above factors cumulatively we intend to protect the admission of the students. As stated above, it is not a case that the institution was not possessing recognition nor it is respondent's case that there were some deficiencies with the institution. However, as the dispute was only to the extent of intake capacity and these students have been admitted, their admission needs to be protected. The respondents shall not cancel the admission of the petitioners only on the count that their admission was beyond intake capacity of 100 students. We have

restricted our observation to the extent of admission for academic year 2018-2019 only.

18. Writ Petition is disposed off. No costs. In view of the disposal of the writ petition, civil application stands disposed of.

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/February-19