

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7222 OF 2019

Shirpur Education Society, Shirpur
R. C. Patel Institute of Pharmaceutical
Education and Research, Shirpur .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri P. M. Shah, Senior Advocate i/by Shri D. S. Bagul, Advocate
for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 and 2.

Shri S. V. Adwant, Advocate for the Respondent No. 3.

Shri S. B. Deshpande, A.S.G. for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

CLOSED FOR ORDER ON : 10.07.2019

ORDER PRONOUNCED ON : 16.07.2019

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioner is assailing action of the respondents reducing the intake of the students under order dated 29.04.2019 by the All India Council for Technical Education (for short "A.I.C.T.E.") and further seeking directions against the respondents to allot intake capacity/shift of the petitioner institution under graduate and post graduate pharmacy courses as was available since 2013 onwards.

2. Mr. Shah, the learned senior advocate for the petitioner submits that, the AICTE granted approval to the petitioner college to conduct B. Pharma course in the year 1992 with intake capacity of 30 students. In the year 1997 the intake capacity was increased to 40 students. In the year 2001 the same was increased to 60 students. From the year 2010 onwards the AICTE increased the intake capacity to 240 students of the petitioner institution for B. Pharmacy course and 18 seats intake for each pharmacy post graduate specialization pharmaceuticals and quality assurance respectively in second shift. In the year 2013-2014, the AICTE granted approval to the intake capacity of 240 students. For B. Pharmacy first shift intake of 180 and second shift intake of 60 students and 18 seats intake for each post graduate specialization pharmaceuticals and quality assurance respectively in second shift. The respondents had reduced the intake capacity of the petitioner institution every year from 2013 to 2018. Every time by filing petition before this Court, the action of reduction of intake capacity was assailed and this Court by granting interim orders protected intake capacity of the petitioner institution and further permitted the petitioner to admit the students.

3. The learned senior advocate further submits that, the decision of the respondent No. 3 not to permit the petitioner to admit students in second shift is illegal. The respondents are

contending that, it is their policy decision not to permit second shift. The said policy decision cannot have retrospective application. It cannot be applied to the institutions that are already permitted to run second shift. The same may apply to the new institutions. The learned senior advocate submits that, the regulation relied by the respondents i. e. All India Council for Technical Education (Grant of Approval for Technical Institute) Regulation 2018 (for short "Regulations of 2018") provides for second shift. Section 2.42 of the Regulations of 2018 defines second shift. It means educational activities conducted in second spell of time from (12.00 noon to 7.00 p. m.) where-ever two shifts work. It is erroneous on the part of the respondents to contend that second shift is not permissible.

4. The learned senior advocate further submits that, if the second shift is not permitted, the employees of the petitioner would suffer. Twenty two support staff would be rendered unemployed and many members of the teaching faculty would also be unemployed. The same infrastructure is required for the first and second shift. Under the impugned decision, the respondents have reduced the intake capacity even of the first shift from 180 to 100 students and have not permitted the petitioner institution to admit students in the second shift. The learned senior advocate refers to the order passed by this Court for the academic year 2018-2019 in the petition filed by the petitioner bearing Writ Petition No. 5710 of 2018 dated

27.06.2018 and submits that, last year also intake capacity was reduced to 100 students from 180 students for under graduate course and this Court granted protection and allowed 180 students. The learned senior advocate refers to interim order passed by the Apex Court in Interim Application No. 02/2015 in Writ Petition (C) No. 372/2014 dated 23.07.2015 and contends that, even the Apex Court by an interim order allowed the institution therein to admit students through Centralized Admission Process round to the courses of diploma in pharmacy which is to be conducted in the second shift. The learned senior advocate further submits that, no deficiency exists. It is a case of zero deficiency. In absence of any deficiency the AICTE could not have reduced the intake capacity. The learned senior advocate further submits that, the contention of the AICTE that it only allows maximum intake of 100 students for B. Pharmacy course to an institution is also erroneous. The AICTE has permitted institutes to admit 120 students also that is 60 students in each division. The learned senior advocate further submits that, the petitioner institution is amongst the list of 50 top institutions in the Country.

5. Mr. Adwant, the learned advocate for the respondent No. 3 submits that, now it has been decided that the AICTE and Pharmacy Council of India would function in tandem. The number of admission to B. Pharmacy courses are restricted to 100 students. While commencing process for the academic

sessions 2018-2019 and 2019-2020, the applications for approval were invited by the AICTE from all the existing and proposed technical institutions for conducting technical programmes/courses for the academic sessions 2018-2019 and 2019-2020 by way of public notice. By the said public notice AICTE informed all the existing technical institutions seeking approval, about the conversion of the second shift course into first shift course. The AICTE has issued a circular on 05.12.2017 on second shift pharmacy. The petitioner was informed to submit affidavit and to deposit the requisite technical educational regulatory charges for conversion of second shift course to first shift or closure of second shift courses. The institute on 16.04.2018 informed that, it is unable to submit affidavit and did not comply the directions of the AICTE. The Executive Committee of AICTE in its 113th Executive Committee meeting held on 06.03.2018 approved the intake of B. Pharmacy course on the lines proposed by the Pharmacy Council of India (for short "PCI"). Thus the intake was approved for 100 seats for pharmacy programme of UG level, even if the institute applies for more seats, as only 100 students would be registered by PCI for practicing the profession. It is further submitted by the learned advocate that 02nd shift programme for pharmacy course at the diploma, UG and PG level are not permitted by the PCI and as such courses are not approved under Section 12 of the Pharmacy Act and such students are not eligible for registration as pharmacist.

6. The learned advocate further submits that, the regulations framed by the Central Authorities such as AICTE has the force of law and binding on all concerned. The learned advocate relies on the judgment of the Apex Court in a case of Parshvanath Charitable Trust and others Vs. All India Council for Technical Education and others reported in (2013) 3 SCC 385. The learned advocate also relies on the judgment of the Apex Court in a case of All India Council for Technical Education Vs. Surinder Kumar Dhawan and others reported in (2009) 11 SCC 726 and submits that, in case of educational policy, the Courts may not interfere with the policy decision of the expert body. The learned advocate submits that, the petitioner institute has to accept the policy decision. The petitioner cannot have legitimate right to run a particular course forever. The learned advocate relies on the judgment of the Apex Court in a case of State of Himachal Pradesh and others Vs. Himachal Pradesh Nizi Vyavsayik Prashikshan Kendra Sangh reported in (2011) 6 SCC 597. The learned advocate also relies on regulation 4.10 (f) and (g) of the Approval Process Handbook to submit that, only regular/first shift courses are permitted and no provision is made for second shift. The learned advocate relying on Regulation 6.1 submits that, the applications received shall be processed as per the norms and procedure prescribed in the Approval Process Handbook as notified by the Council from time to time. Appendix 3.1 of the Approval Process Handbook limits the maximum intake capacity for being allotted

to every institute.

7. Upon hearing the learned advocate for respective parties, the gamut of the grievance of the petitioner appears to be (i) the petitioner not granted extension of approval for second shift by AICTE and (ii) restricting the intake capacity to 100 students for UG course.

8. For the earlier years the PCI use to restrict the intake capacity of the institutions, though the AICTE use to grant extension of approval for more intake capacity of students. Considering the fact that, AICTE is the apex body, this Court permitted the petitioner institution to admit the students with the intake capacity approved by the AICTE. In the year 2018-2019 for the first time the AICTE reduced intake capacity of the petitioner institution. The Court referring to the orders passed in earlier writ petition granted interim order allowing the petitioner institute to admit the students as was permitted in the preceding year. The Court on the ground that deficiencies are not pointed out and that the orders passed by this Court in the case of petitioner in the preceding year were not assailed by the respondents granted interim order with certain conditions.

9. The AICTE in exercise of powers conferred under Section 1 of Sec. 23 read with Sec. 10 and 11 of the Indian Council for Technical Education Act, 1947 (for short “Act of 1947”) enacted

All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2018 (for short “Regulations 2018”). Section 2.42 defines second shift. However, perusal of the said regulations in its entirety, it nowhere provides for the approved intake of second shift. Clause 4.10 (a), (f), (g) and (h) of the Regulations 2018 reads thus :

**All India Council for Technical Education (Grant of
Approvals for Technical Institutions) Regulations,
2018**

1.

2.

4. Generic Conditions for Approvals

4.1

4.2

**4.10 Guidelines for the new/existing
Institutions**

a. All the Technical Institutions shall fulfill the relevant requisite norms as specified in the Approval Process Handbook.

b. ...

c. ...

f Institutions having an “Approved Intake” less than a Division size in any of the Regular/First Shift Courses as prescribed by the Council may apply for intake of

full Division size themselves and shall maintain Faculty: Student ratio accordingly, without NBA accreditation/NOC from Affiliating University/ Board/ State Government/ UT, subject to "Zero Deficiency" in the Web-Portal. However, this is not applicable in case of Institutions under penal action.

- g. Institutions may apply for reduction in intake in any of the Regular/First Shift Courses within a Division by themselves in the Web-Portal and shall maintain Faculty: Student ratio accordingly, without NOC from Affiliating University/ Board/ State Government/ UT, the restoration shall be permitted within a Division without NBA.
- h. Existing Institutions having total "Approved Intake" less than the "Maximum Intake Allowed"/ Institutions not eligible to apply for NBA accreditation, shall be permitted to increase (without NBA accreditation) upto the "Maximum Intake Allowed" in each Programme (considering all the specializations in MBA) as that of

a new Technical Institution, as specified in the Approval Process Handbook, subject to "Zero Deficiency" based on Self-Disclosure on AICTE Web-Portal.

An Expert Visit Committee may be conducted, any time before the first batch of students has passed out, to verify the fulfillment of the norms as specified in the Approval Process Handbook.

10. The aforesaid clauses speaks for intake capacity of regular/first shift courses only. Appendix 3 of the Approval Process Handbook 2019-20 gives the maximum intake capacity allotted for all diploma, UG and PG for different courses. The same is reproduced hereinbelow :

APPROVAL PROCESS HANDBOOK 2019-2020

Appendix 3

3.0 Norms for Intake and Number of Courses / Divisions in a new Technical Institution

3.1 Diploma / Post Diploma Level

Sr. No.	Programme	Intake per Division	Maximum number of Diploma/ Post Diploma Certificate Course(s) allowed in an Technical Institution (First Shift Only)	
			Course(s)/Division(s)	Maximum Intake allowed

i	Engineering and Technology	60	5	300
ii	Pharmacy	60	1	60
iii	Architecture and Planning			
	a. Architecture	40	2	80
iv	Applied Arts, Crafts and Design			
	a. Applied Arts and Crafts	30	3	90
	b. Design	30	3	90
v	Hotel Management and Catering Technology	60	3	180

3.2 Under Graduate Level

Sr. No.	Programme	Intake per Division	Maximum number of Under Graduate Course(s)/Division(s) allowed in an Technical Institution (First Shift Only)	
			Course(s)/Division(s)	Maximum Intake allowed
i	Engineering and Technology	60	5	300
ii	Pharmacy	60	2	100
iii	Architecture and Planning			
	a. Architecture	40	4	160
	b. Planning	40	3	120
iv	Applied Arts, Crafts and Design			
	a. Applied Arts and Crafts	30	3	90
	b. Design	30	5	150

v	Hotel Management and Catering Technology	60	3	180
---	--	----	---	-----

3.3 Post Graduate Diploma/ Post Graduate Degree Level

Sr. No.	Programme	Intake per Division	Maximum number of Post Graduate Division(s) allowed in an Institution (First Shift only)	
			Course(s)/Division(s)	Maximum Intake allowed
i	Engineering and Technology	30*	1	30
ii	Pharmacy			
	a. M. Pharm.	15**	1	15
	b. Pharm. D.	30	1	30
	c. Pharm.D. (Post Baccalaureate)	10	1	10
iii	Architecture and Planning			
	a. Architecture	20	3	60
	b. Planning	30*	1	30
iv	Applied Arts, Crafts and Design	30	3	90
	a. Applied Arts and Crafts	15	3	45
	b. Design			
v	Hotel Management and Catering Technology	30	3	90
vi	MCA	60	3	180
vii	Management	60	5	300

* Minimum of 18 seats in steps of 6 up to maximum 30

** Minimum of 6 seats in steps of 3 up to a maximum of 15

Note: One Division with Collaboration and Twinning is

permissible in each Programme

**3.4 Private Limited or Public Limited Company/
Industry Establishing Diploma/ Under Graduate
Degree/ Post Graduate Degree (MCA/Management)
Institution.**

a. New Technical Institution in Engineering and Technology/ Pharmacy/ Architecture and Planning/ Applied Arts, Crafts and Design/ Hotel Management and Catering Technology/ MCA/ Management established by a Private Limited or Public Limited Company/ Industry having turnover of at least Rs. 100 Crore per year for previous 3 years shall be eligible for application and granted approval for Intake as above following due procedure as specified in the Approval Process Handbook.

b. The Institution set up by such a Private Limited or Public Limited Company/ Industry shall be governed by the norms as specified in Chapter I of Approval Process Handbook.

c. Private Limited or Public Limited Company/ Industry Establishing Diploma/ Under Graduate Degree/ Post Graduate Degree Institution shall choose any Course from Appendix 2 with Intake not exceeding the maximum as above and in any combination in the same Programme.

d. Built-up area, Faculty: Student ratio and other requirements shall be fulfilled as specified in the Approval Process Handbook.

11. Perusing the Appendix 3 as referred to above for Diploma in Pharmacy course intake per division is 60. Maximum intake allowed is 60. For under graduate Pharmacy intake per division allowed is 60. Two divisions are permitted and maximum intake allowed is 100 and that too in first shift only. No intake is shown permissible in the second shift. The admission process is regulated as per the Approval Process Handbook 2019-20 and the Regulations 2018. For UG Pharmacy course the maximum

number intake allowed in an institution is 100 students. Regulation 2.22 (b) defines division. It means a batch of 60 seats in Diploma/Under Graduate Courses and to a maximum of 100 seats in Under Graduate Courses in Pharmacy Programme, excluding supernumerary seats, if any. Regulation 2.22 clearly lays down the maximum intake capacity permissible in an institution. Reading Regulation 2.22 of Regulations 2018 with Appendix 3 of Approval Process Handbook 2019-20, it is manifest that an institution is permitted only maximum intake of 100 students for under graduate Pharmacy course. Regulation 4.10 (h) also specifically provides that existing institutions having total approved intake less than maximum intake allowed shall be permitted to increase upto the maximum intake allowed in each as specified in Approval Process Handbook. Reading the regulations and the Appendix 3 of the Approval Process Handbook 2019-20, it is manifest that the intake capacity for under graduate Pharmacy course cannot exceed 100 students.

12. Policy and the regulations framed by AICTE are not subject matter of challenge. It is the power and authority vested in the AICTE to frame the policy and guidelines based on relevant acceptable material. The PCI does not register the students of second shift and the students beyond particular intake. If the petitioner institution is allowed to admit the students at their peril, it is the students, who may have to undergo complexities after passing out the course. The AICTE

considering the fate of the students and so as to streamline the intake of students for the Pharmacy course has come on the same pedestal that of PCI and has allowed the intake capacity as is recognized by the PCI. The same would be in the interest of the students. They would not require to undergo future agony at the hands of the PCI. The policy will have to be made considering circumstances. The policy cannot be static. It may change with changing times, changing circumstances and changing environment.

13. The Apex Court in a case of Himachal Pradesh and others Vs. Himachal Pradesh Nizi Vyavsayik Prashikshan Kendra Sangh (supra) has observed as under :

No institute can have a legitimate right or expectation to run a particular course for ever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The Courts do not substitute its views in the decision of the State Government with regard to policy matters. In fact, the Court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate

of the Constitution.

14. To frame the policy of not permitting the second shift in tune with the policy of PCI is within exclusive jurisdiction of the AICTE. The Court would not act as an appellate authority examining the correctness of the policy. In the present case, even the policy is not subject matter of challenge. Passing any orders permitting the petitioner to admit students in the second shift would be against the policy decision of the AICTE, which is within its purview and domain.

15. We cannot allow the petitioner to admit the students beyond the permissible limit as per the regulations and the Approval Process Handbook, only because according to the petitioner some of the staff would be rendered unemployed. The petitioner may accommodate them, however, it would not be appropriate to direct the respondents to allow the petitioner to admit more students than maximum intake permissible and so also in the second shift against the policy of the PCI and AICTE. In doing so, we would be placing students' future in dark.

16. Regulation 6 of Regulations 2018 further provides that applications shall be processed as per the norms and procedure prescribed in the Approval Process Handbook as notified by the Council from time to time in addition to the existing Central, State and Local Laws, meaning thereby that approval process

handbook would be an integral part of the regulations. Institution applying for extension of approval has to confirm to the regulations. We cannot by the fiat of the Court direct allowing second shift and permitting admission of students beyond the maximum intake capacity de hors the policy framed by the AICTE. Only because interim order was passed last year, we cannot as a matter of course permit the petitioner to admit the students against the policy decision of the AICTE. Whether the second shift should be permitted to run and what should be maximum intake capacity are decisions in academic matters. The AICTE is armed by professional and technical experts in the stream of education, qualified and equipped to decide the said issues. It is statutory body obligated to decide all such policy matters. The Court cannot substitute its views over the views of statutory bodies.

17. In view of the aforesaid, we are not inclined to accede to the request of the petitioner. The writ petition as such stands disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 19