

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 20946 of 2019 (O&M)

Date of Decision: September 24, 2019

National Welfare Health and Education Awareness Charitable Society (Regd.)

.....Petitioner

versus

Punjab State Board of Technical Education and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MR. JUSTICE SUDHIR MITTAL.**

Present: Mr. Nitin Kant Setia, Advocate
for the petitioner

Mr. Rajeev Kawatra, Advocate
for respondent No. 1

Mr. Ashok K. Sharma, Advocate for
Mr. S.K. Sharma, Advocate
for respondent No. 2

Sudhir Mittal, J.

The petitioner is a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as 'the Society') on 15.05.2001. It has established a College known as Majha College of Pharmacy (hereinafter referred to as 'the College') for conducting two years diploma course in Pharmacy. It is averred, that earlier, the Society has been conducting a nursing diploma course ANM since the year 2008. Its grievance is that the Punjab State Board of Technical Education and Industrial Training (respondent No. 1) has illegally not granted affiliation for the academic years 2019-20, even though the College has obtained all the necessary approvals.

2. It has been further averred that respondent No. 1 issued a consent letter/no objection certificate dated 30.08.2016 permitting the College to start a

diploma course in Pharmacy. Thereafter, the Pharmacy Council of India (respondent No. 2) granted approval dated 24.11.2017 for conducting the first year of the diploma course in the Session 2017-18. However, the College was unable to start the said course during the Session 2017-18 and, therefore, vide application dated 16.08.2018 a request was made to respondent No. 1 for renewal of NOC granted for starting a new diploma course in Pharmacy. This application was for the academic Session 2019-20. Respondent No. 2 wrote a letter dated 01.01.2019 to the College asking it to apply afresh for approval for the Session 2019-20, which appears to have been granted vide letter dated 07.06.2019, a copy of which has been placed on record by way of Civil Miscellaneous application. The said approval appears to have been granted pursuant to an inspection carried out by respondent No. 2 on 23.03.2019. Meanwhile, the College made a fresh application dated 05.01.2019 to respondent No. 1 for permission to start a fresh D-Pharmacy course during the Session 2019-20. Prior thereto respondent No. 1 had conducted a verification of the College and had pointed out certain deficiencies whereupon the College wrote a letter dated 31.01.2019 answering the said deficiencies. One of the deficiencies pointed out was regarding the land of the College. Respondent No. 1 replied vide letter dated 28.02.2019 to say that the requisite documents had still not been received and, hence, consent can not be granted. The affiliation file also can not be processed for lack of payment of late fee. Thereafter, the College submitted representations dated 22.04.2019, 09.05.2019, 14.05.2019, 22.05.2019, 30.05.2019 and 11.07.2019 for renewal of NOC and grant of affiliation. In response, respondent No. 1 sent a letter dated 29.07.2019 (copy of which has been placed on record through Civil Miscellaneous application) saying that change of land use permission has not been supplied by the College despite repeated reminders. Vide letter dated 30.04.2019 All India Council of Technical

Education (AICTE) granted approval to the College under the All India Council for Technical Education (Grant of approval for Technical Institutions) Regulations 2018 (hereinafter referred to as '2018 Regulations'). Its approval is valid for two years from the date of issuance and according to the terms thereof is valid only for getting affiliation from the respective University/Board of Technical Education and for fulfilling State Government requirements for admission.

3. In the aforementioned backdrop, learned counsel for the petitioner submits that for the academic Session 2019-20, the College had requisite approval of respondent No. 2 and AICTE had also issued the letter of approval. Yet, respondent No. 1 failed to issue no objection certificate and grant affiliation to the College for starting D-Pharmacy during the Session 2019-20. The reason appears to be non-submission of change of land use permission but this demand was without jurisdiction as no provision of the Punjab State Board of Technical Education and Industrial Training Act, 1992 (hereinafter referred to as 'the Punjab Act') or any rules and regulations framed thereunder authorise respondent No. 1 in this regard. Before grant of letter of approval, AICTE had conducted an inspection and from the inspection proforma it is apparent that details of land and building were also gone into. The AICTE being a central body constituted under a central Act will prevail over respondent No. 1 as it is a State body constituted under a State Act. Assuming that the State Act or Rules and Regulations framed thereunder, authorised respondent No. 1 to go into the issues regarding the land of a College, such authority would be in conflict with the authority granted under the central legislation. Consequently, the central legislation would prevail and once AICTE had granted letter of approval, demand of change of land use certificate by respondent No. 1 is not only unjustified but patently illegal. It is further argued that a reference to regulation 6.2 of 2018 Regulations would show that an

affiliating board is required to forward its views to AICTE on an application received for permission to commence a new College. Thus, it is obvious that respondent No. 1 had recommended the College otherwise letter of approval would not have been granted by AICTE. Having done so, respondent No. 1 can not be permitted to take a different stand at the stage of granting affiliation. Finally it is argued that respondent No. 1 had given its consent to start a new College in the year 2016 and the same is valid for all times to come. Thus, there was no requirement to seek fresh consent for the academic Session 2019-20. The consent from AICTE and respondent No. 2 were already available and respondent No. 1 was duty bound to grant affiliation under such circumstances. Reliance has been placed upon judgment of Hon'ble Supreme Court passed in ***State of T.N. and another vs. Adhiyaman Educational & Research Institute and others, 1995(4) SCC 104.***

4. A short affidavit has been filed on behalf of respondent No. 1 wherein it is averred that the present petition has been filed with the sole object of earning profit. According to Clause 2.8 of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012, the competent authority for granting admissions is a body to whom authority has been delegated by the State/U.T. Concerned for making admissions. Respondent No. 1 is the competent authority under the said Clause and in exercise of its authority, it is duty bound to ensure that only Colleges which are fully compliant with all requirements are granted affiliation. Section 17 of 1992 Act lists out the functions and duties of respondent No. 1 and one of the duties is to inspect an institution for the purpose of grant of affiliation. Approval granted by AICTE is conditional and is only for the purposes of grant of affiliation which authority is vested in respondent No. 1. The answering respondent has not found the College fit for affiliation as change of land

use permission has not been obtained by it. Respondent No. 1 is authorised in law to check the status of the land on which the College has been constructed and unless and until the change of land use certificate is submitted, affiliation can not be granted. The writ petition is, thus, liable to be dismissed.

5. Undoubtedly, when legislation by a State legislature and that by a Central legislature occupy the same field, the State legislation has to make way for the Central legislation. However, it must first be shown that both the State and the Central legislatures had the authority to enact the respective laws. For this purpose, reference would be necessary to the list mentioned in the VIIth Schedule to the Constitution of India. Learned counsel for the petitioner has failed to make any such reference and, thus, has not laid the foundation for his argument. In spite of these shortcomings, we are proceeding to examine the contention raised based on the doctrine of repugnancy. This argument is only based on the inspection proforma of the AICTE. Reference has not been made to any provision of All India Council for Technical Education Act, 1987 or any Rules or Regulations framed thereunder. Thus, learned counsel for the petitioner has failed to establish that AICTE is the only authority entitled to examine the issue of the land of an educational institution seeking approval. In this situation, the argument of learned counsel for respondent No. 1 based upon Section 17 of 1992 Act has to be accepted. The said Section 17 enumerates the functions and duties of respondent No. 1, one of which is to inspect any institution seeking affiliation. The inspection can validity include all the aspects including that pertaining to the land of the Institution because if the land does not belong to the College or is subject to some other defect in title, the local authorities could proceed to take action under the local law for stoppage of user of the building. Taking an example, where the College has constructed its building upon encroached land, the local authorities

would be justified in seeking possession of the land and taking action for demolition of the building. Such an action would adversely effect the career of the students who have taken admission and, thus, it has to be held that seeking information regarding status of the land of a College seeking affiliation is within the authority of an affiliating body. In the instant case, the College admittedly does not possess change of land use certificate. Certificates regarding the land shown to us in Court are not sufficient. One of these certificates dated 26.02.2019 issued by Tehsildar, Batala only narrates that the land of the College is on lease to the Society and there is no dispute pertaining to the same. The second certificate also dated 26.02.2019 issued by the Tehsildar Batala recites that the land is contiguous and in possession of the Society. Third certificate of even date issued by the same authority recites that the land is on lease for a period of 30 years with the Society and that the site plan and building plans are duly approved by the Tehsildar concerned. We fail to understand the authority under which the Tehsildar, Batala could issue such a certificate. Accordingly, argument of learned counsel for the petitioner based on the doctrine of repugnancy is rejected. The judgment in the case of *Adhiyaman Educational & Research Institute (supra)* cannot apply as we have found that the doctrine of repugnancy is not attracted in the present case.

6. The argument of learned counsel for the petitioner based on Regulation 6.2 of the 2018 Regulations is also misconceived. Regulation 6.2 is reproduced below for ready reference:-

6.2 For setting up a new institution

The State Government/UT and the Affiliating University/Board shall forward their views on the applications received under Clause 1.2.a of these Regulations to the concerned Regional Office, not later than one week from the last date of submission of application as notified.

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

7. The said regulation states that in case the views of an affiliating board are not received, the AICTE would proceed further for processing the application. There is nothing on record to indicate that respondent No. 1, infact, gave its views on the application submitted by the College. Thus, we can not assume that respondent No. 1 had given a positive recommendation in favour of the College at the stage of issuance of approval letter by the AICTE. The argument that respondent No. 1 was estopped from raising the objections regarding change of land use after having recommended the case of the College, thus, deserves to be rejected outrightly.

8. There is another aspect of the matter. A perusal of representations dated 22.04.2019 and 09.05.2019 show that the College was asking for renewal of the consent and seeking permission to start a new course. In view of these representations, the argument of learned counsel for the petitioner that consent dated 30.08.2016 did not need to be renewed, is patently contradictory. Learned counsel for the petitioner has failed to point out any statutory provision which provides that a consent once granted shall continue for all times to come. In this view of the matter, we have no hesitation in holding that no consent of respondent No. 1 was in existence for the academic Session 2019-20. Till the consent is granted affiliation can not be granted and consequently the argument of learned counsel for the petitioner that the consent dated 30.08.2016 had not lapsed, is rejected.

9. The authority of respondent No. 1 has to be respected and merely because the College had succeeded in obtaining approvals from the AICTE and

respondent No. 2, it can not be said that affiliation should have been granted automatically. If grant of affiliation becomes a matter of right upon approvals having been granted by the central authorities, then the Punjab Act would become a dead letter. The process of granting the affiliation would be reduced to a mere formality and unscrupulous Colleges could play with the future of their students. Such an interpretation would be against public interest and can not be adopted. For this purpose reliance is placed on *National Council for Teacher Education and another vs. Venus Public Education Society and others, 2013(1) SCC 223* wherein the Supreme Court examined the provisions of National Council for Teacher Education Act, 1993 and regulations framed thereunder and held that despite Section 14(6) of the said Act, grant of recognition is not an empty formality.

10. The writ petition is, thus, without merit and is dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

September 24, 2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No