

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**220**

**CM-3890-LPA-2018 and  
LPA NO. 2106 of 2012  
Date of Decision : 22.05.2019**

National Institute of Pharmaceuticals Education & Research (NIPER),  
through its Acting Registrar

... Appellant

Versus

Dr. Parikshit Bansal and others

...Respondents

**CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN  
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. K.K.Gupta, Advocate and  
Mr. Amar Vivek, Advocate for the applicant-appellant.

Mr. Puneet Sharma, Advocate for respondents No.1 and 2.

Mr. Rajiv Atma Ram Senior Advocate with  
Mr. Sube Singh, Advocate for respondent No.3.

Mr. Arun Gosain, Advocate for respondent no.8/UOI.

**RAKESH KUMAR JAIN, J.(ORAL)**

**CM-3890-LPA-2018 and Main case.**

This application is filed by the appellant under Order 23 Rule 1, of the Code of Civil Procedure, 1908 (for short 'CPC') for withdrawal of the appeal on the ground that it has become infructuous.

Notice in the application was issued to which reply has been filed.

Shorn of unnecessary details, the LPA No. 2106 of 2012 has arisen from the order of the learned Single Judge, rendered in CWP No. 6458 of 2012, titled as ***Dr. Parikshit Bansal and another Versus Union of India and others***, which was allowed on 13.11.2012 by which

appointment of respondent No.3 i.e. PJP Singh Waraich, the then Registrar of the National Institute of Pharmaceutical Education & Research (NIPER) was set aside.

It is pertinent to mention that the aforesaid respondent No.3 has also preferred a separate appeal bearing LPA No.2094 of 2012 which is pending adjudication but the interim order passed in that case in favour of the appellant therein i.e. respondent, namely, PJP Singh Waraich was vacated vide order dated 12.07.2018. It is alleged by the applicant/appellant that after the departure of the said respondent No.3, the present application has been filed through the Registrar of the NIPER.

The application for withdrawal has been hotly contested by respondent No.3.

On 05.03.2019, this court had passed the following order:-

*"This application is filed by the applicant/respondent for seeking permission of the Court to withdraw the appeal.*

*Notice was issued in the application to which reply has been filed.*

*Learned counsel appearing on behalf of respondent No.3 has submitted that the present application has been filed only at the instance of the Registrar at the behest of the present Director without there being resolution of the Board of Directors of the NIPER in this regard.*

*Learned counsel for the applicant/appellant is directed to bring on record the resolution passed by the Board of Directors of the NIPER to withdraw the appeal.*

*Adjourned to 19.03.2019."*

Order dated 19.03.2019 is also reproduced hereunder:-

*"Mr.K.K.Gupta, Advocate has submitted that as per Section 18(4) of the National Institute of Pharmaceutical Education and Research (for short NIPER) Act, 1988, the Registrar has the jurisdiction to exercise such powers and perform such other duties as may be assigned to him by this Act or the Statutes or the Director. In this regard, he has referred to Clause 14(i) of National Institute of Pharmaceutical Education and Research (NIPER) to contend that the powers is exercised by the Registrar not through the Board of Governors but under this Statute.*

*Learned counsel for respondent No.3 has prayed for an adjournment on the ground that arguing counsel Mr. Rajiv Atma Ram is in personal difficulty today.*

*Adjourned to 05.04.2019."*

The controversy has thus boiled down to determine as to whether the application filed at the instance of the NIPER through Registrar for the purpose of withdrawal of the appeal is maintainable without there being any permission by the Board of Governors. Learned counsel for the respondent has questioned the authority of the Registrar to file the application to withdraw the appeal in the absence of any resolution having been passed by the Board of Governors of the NIPER.

Before we refer to the contention of the applicant-appellant, we would refer to the objections raised by the respondent. Learned Senior counsel appearing on behalf of respondent No.3 has referred to Section 4(1) of the National Institute of Pharmaceutical Education and Research Act, 1998 (for short 'Act, 1998') in which it is provided that "

*With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the National Institute of Pharmaceutical Education and Research shall be constituted as a body corporate by the name aforesaid."* He has then referred to Section 8(1) of the Act, 1998 which reads as under:-

*"8(1) Subject to the provisions of this Act, the Board shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers not otherwise provided for by this Act, the Statutes and the Ordinances, and shall have the power to review the acts of the Senate."*

Learned counsel for respondent No.3 has submitted that the Registrar does not have the power to file an application for withdrawal of the appeal as the power would vest with the competent authority i.e. Board of Governors and in the absence of any resolution having been passed by the Board of Governors, the power exercised by the Registrar is patently illegal. In support of his submission, he has referred to the judgment of this court rendered in the case of ***National Institute of Pharmaceutical Education & Research (NIPER) and another versus Chairman, Board of Governors, NIPER, Mohali and others, i.e.*** CWP No.15608 of 2018 decided on 12.09.2018. He has also submitted that the Registrar, at the most has the power and competence to represent the NIPER but he does not have the competence and jurisdiction to take a decision either to file the litigation on behalf of the NIPER or withdraw the same. In support of his submission, he has referred to the following judgments:-

- (i) ***State Bank of Travancore Versus M/s Kingston Computers (I) P. Ltd.***, 2011 AIR SC (Civil) 786
- (ii) ***Panjab University Chandigarh Versus Satinder Parkash Srivastava***, 2005 (4) S.C.T. 102
- (iii) ***Vijayanagara Krishnadevaraya University rep, by its Vice Chancellor, Bellary and another Versus Katepaga Vijaykumar, Ex-Registrar, Bellary and others***, 2013(20) SCT 808
- (iv) ***Vice Chancellor, Utkal University and others Versus S.K.Ghosh and others***, 1954 AIR (SC) 217
- (v) ***Punjab University versus V.N.Tripathi***, 2001(4) S.C.T. 333.

On the other hand, learned counsel appearing on behalf of the applicant has submitted that the Registrar has exercised his power in terms of Section 18(4) of the Act, 1998 read with Clause 14(i) of the Statutes of the National Institute of Pharmaceutical Education & Research (for short 'Statutes'). Clause 18(4) of the Act, 1998 reads as under:-

*"The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Statutes or the Director."*

Clause 14(i) of the Statutes provides that *"to represent the Institute in suits or proceedings by or against the Institute, sign powers of attorney and verify pleading or depute his representative for the purpose."*

Additionally, it is submitted that the power under Section 18 (4) of the Act, 1998 is conferred upon the Registrar by the Director in terms of Section 16(2) which reads as under:-

*"The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and*

*academic performance of the Institute and for imparting of instruction and maintenance of discipline therein."*

It is further submitted that Section 8(1), referred to by learned counsel for respondent No.3 also provides that the Board of Governors would exercise all the powers not otherwise provided for by this Act, the Statutes and the Ordinances. It is thus sought to be argued that since the power has been provided under the Act to the Director who is the Executive Head of the Institute and the Registrar, as per Section 18(4), is permitted to exercise his power either which has been assigned to him by the Act, or the statute or the Director, therefore, acting upon the decision of the Director, the petition was filed and is being sought to be withdrawn.

We have heard learned counsel for the parties and perused the record with their able assistance.

There is no dispute that the present appeal has been filed through Registrar on the decision of the officiating Director which we have found from the original record and the application has been filed by the Registrar under the direction and decision taken by the Director for withdrawal of the same. It has also been argued before us that there is no decision taken by the Board of Governors at the time of filing of the appeal or even at the time of withdrawal of the appeal and the decision has been solely taken by the Director of the NIPER.

While referring to the judgments relied upon by counsel for respondent No.3, in the case of *NIPER and another* cited (supra), the NIPER had filed a writ in the nature of certiorari for seeking quashing of the *ex parte* order dated 14.06.2018 by which respondent No.1-Chairman

of the Board of Governors had set-aside the order dated 13.06.2018 passed by the Director NIPER, suspending the respondent No.3 herein. In the said petition, the maintainability of the writ petition filed at the instance of NIPER through the Director and Director of the NIPER was challenged on the ground that the Director had not been authorized by the Board of Governors to maintain the writ petition against the order passed by the Chairman of the Board of Governors. In the said writ petition, Clause 14(i) of the Statutes was pressed into service by respondent No.3 and this court had held that jurisdiction vest with the Registrar of the NIPER to represent the NIPER(Institute) and it does not vest with the Director at all. In the present case, however, the facts are altogether different because in this case the petition has been filed by the NIPER through the Registrar, who is representing the NIPER (Institute) before this court while challenging the order of the learned Single Judge by which the appointment of respondent No.3 herein as the Registrar of the NIPER was set aside.

Therefore, the judgment relied upon by learned counsel for respondent No.3 in this regard is not found applicable to the facts and circumstances of the present case.

Insofar as, other judgments are concerned, relied upon by learned counsel for respondent No.3 that the NIPER being a corporate body could only speak through resolution of the Board of Governors and the Registrar, is only authorized to represent, cannot take the decision. The said judgments relied upon by learned counsel for respondent No.3 are also not applicable to the facts and circumstances of the present case specifically in view of the fact that the power has been specifically

conferred upon the Director in terms of Section 16(2) of the Act, 1998, as the Executive Head of the Institute and the Registrar has been given the power to act in terms of Section 18(4) of Act, 1998 to perform such duties in terms of Section 18(4) of the Act, 1998 which may be assigned to him under the Act, Statute or by the Director.

In the present case, as we have seen the original file, produced before us, the decision has been taken by the Director authorising the Registrar of the Institute to represent the Institute before this court for filing the appeal and also decision has been taken asking the Registrar to withdraw the same.

At this stage, learned counsel for respondent No.3 has also referred to a decision of this Court in the case of ***Sarv Mittar Sharma, Special Secy. Punjab and Haryana High Court Versus Punjab and Haryana High Court, Chandigarh through its Registrar***, 1992(3) Service Cases Today 393, to contend that the decision was taken by the previous Director which could not be reviewed by the present Director. We do not agree with the contention raised by learned counsel for respondent No.3 in this regard specifically in view of the contents of the application particularly para 9, which reads as under:-

*"That it is also pertinent to mention that in view of the fact that the Appellant NIPER has already implemented the orders of the Ld. Single Judge, which have been Impugned herein, and in pursuance thereof Mr. Waraich stands already relieved, as such the present appeal has since been rendered infructuous. As such, the present application accordingly is being filed on behalf of the Appellant NIPER, for issuance of a direction that in the most peculiar facts of this case, this Hon'ble Court be*

*pleased to dismiss the present appeal as infructuous,  
in the light of the events as fully enumerated  
hereinabove."*

We have found that cause shown in the application filed at the instance of the appellant is that with the efflux of time, much less because of the subsequent events, arising in this appeal, the same has been rendered infructuous and therefore, it would be a futile exercise on the part of the appellant, as conceived by it to continue with the present appeal and therefore, the application has rightly been filed for the purpose of withdrawal of the same.

No other argument has been raised.

In view of the aforesaid discussion, present application is hereby allowed.

Consequently, main appeal is hereby dismissed as withdrawn.

**( RAKESH KUMAR JAIN )  
JUDGE**

**( HARNARESH SINGH GILL )  
JUDGE**

**22.05.2019**  
pooja saini

*Whether speaking/reasoned?*

*Yes/No*

*Whether reportable?*

*Yes/No*