

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 6643/2019 & CM APPL.28071/2019**

Judgment reserved on : 26.07.2019
Date of decision : 31.07.2019

JANTA COLLEGE OF PHARMACY Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Chander Shekhar, Advocate

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
..... Respondent

Through: Mr. Anil Soni, Standing
Counsel and Mr. Abhinav
Tyagi, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner the Janta College of Pharmacy vide the present writ petition seeks the quashing of the order dated 25.04.2019 bearing No.F.No. Northern/1-4263341465/EOA and also the quashing of the order dated 07.05.2019 bearing No.F.No.AICTE/AB/NR/PID-1-2496405271/2019-20 of the AICTE of the Advisory-II Approval Bureau. The petitioner also seeks issuance of directions to the AICTE to issue an EOA with 100 seats for the B. Pharma course or another opportunity for hearing be given to it before the SAC for the academic year 2019-20.

2. The AICTE vide its communications dated 25.04.2015 and 07.05.2015 reduced 40% seats in the existing B. Pharma course being conducted by the petitioner institute and also did not grant approval to the petitioner for conducting the Diploma Pharmacy course for the academic year 2019-20.

3. The petitioner submits that the petitioner institute has been established and is being run by the Narseran Memorial Education Society for imparting quality professional education.

4. The petitioner submits that despite compliance having been made by the petitioner, the respondent/AICTE has contrary to its own rule and without appreciating the EVC report, issued the orders dated 25.04.2019 and 07.05.2019, which the petitioner contends are wholly illegal and suffers from manifest error.

5. The petitioner submits that the B. Pharma i.e. the undergraduate course is being run in its institute since the academic year 2015-16 and that it meets all stipulated requirements as per the AICTE- APH (Approval Process Handbook) 2019-20. The petitioner submits that in terms of the Approval Process Handbook published by the AICTE for the year 2015-16, it had applied to the respondent vide permanent application ID No.1-2496405271 seeking grant of approval for starting a new pharmacy institute in the name and style of Janta College of Pharmacy (UG), at Noorpur, Post Khas, Tehsil Chandpur, District Bijnor, Uttar Pradesh for the academic year 2015-16, which application was processed by the AICTE and after due verification of documents and physical verification of the petitioner institute, the

AICTE had granted the LOA i.e. Letter of Approval on 30.04.2015 to the petitioner institute.

6. It has also been submitted on behalf of the petitioner that on 30.03.2017, it had applied to the AICTE seeking extension of approval for the academic year 2017-18 and the AICTE had granted extension of approval to the petitioner institute for the academic year 2017-18 vide letter dated 30.03.2017. The petitioner submits that it was also granted the EOA by the respondent vide letter dated 04.04.2018 for the academic year 2018-19.

7. The petitioner further submits that on 14.09.2018, the respondent conducted a surprise inspection of the petitioner institute and that the Committee noted a few deficiencies and vide Circular dated 03.10.2018 directed the petitioner institute to appear before the Standing Hearing Committee (SHC) which was scheduled on 25.10.2018 at the AICTE Headquarters, New Delhi and that on 25.10.2018, the petitioner appeared before the SHC along with all relevant documents and submitted all requisite documents in order to cure the defects as pointed out by the EVC in its report dated 14.09.2018.

8. The petitioner submits that on 16.11.2018, the AICTE based on the recommendation of the SHC, placed the institute under 'No Admission' for the academic year 2019-20 against which the petitioner preferred a statutory appeal before the AICTE against the order dated 16.11.2018. The petitioner further submits that it appeared before the Standing Hearing Committee of the AICTE on 18.01.2019 and once again submitted all relevant documents against the deficiencies as

noted by the SHC and that after scrutiny of documents, the SHC recommended an EOA with 40% reduction in intake to the running institute.

9. The petitioner further submits that in February, 2019, it had submitted an application under Chapter II seeking extension of approval for running the Pharmacy course (UG) with 100 intake and also to start a new diploma course with 60 intake as per rule 2.3.2.a & e under Chapter II of the AICTE APH 2019-20. The petitioner submits that the EVC in terms of the AICTE APH 2019-20 conducted a visit to verify the requisite infrastructure and amenities of the petitioner institute and that the said Committee found 'Nil Deficiency' and forwarded the application of the petitioner institute to the Regional Committee.

10. The petitioner further submits that vide Circular dated 25.03.2019, the AICTE informed the petitioner institute to attend the SHC scheduled on 29-30.03.2019 and that the AICTE vide Circular had clarified as under:

“The institute(s) where the EVC have noted deficiencies, only are requested to attend the SHC for presenting their case before SHC. If 'NIL DEFICIENCY' noted by EVC the institution need not appear before SHC unless AICTE, HQ specially send(s) a communication through e-mail to attend the SHC.”

11. The petitioner submits that it chose not to appear before the SHC on the date scheduled as the EVC had noted 'Nil Deficiency' in the case of the petitioner institute. The petitioner further submits that on 12.04.2019, the AICTE again directed the petitioner institute to

appear before the SAC of the AICTE and to submit necessary documents in order to cure the deficiencies as pointed out by the earlier committee of the AICTE in respect of running of the B. Pharma course. The petitioner submits that the Pharmacy Council of India (PCI) in its CC meeting held on 18.04.2019, granted approval to the petitioner institute to take admission of 60 students for the academic year 2019-20 and that for the running of a pharmacy course, the PCI approval is necessary and the petitioner institute has the permission from the PCI to start the diploma pharmacy course for the academic year 2019-20. The petitioner also submits that on 25.04.2019 the AICTE uploaded the EOA of the petitioner institute for the academic year 2019-20 with 40% reduction in the Pharmacy course (UG) and also did not grant approval to the new diploma course despite the factum that the EVC noted 'Nil Deficiency' after the physical verification of the institute and that on 26.04.2019, the petitioner went to the AICTE office and requested them to issue the LOA for the Diploma Pharmacy course in as much as the EVC team of the AICTE as a matter of fact noted Nil Deficiency after due verification for the Diploma Course and that as per the APH 2019-20, where the report of EVC noted 'Nil Deficiency', the AICTE contrary to its own rule cannot be permitted to deny the LOA to the Diploma Pharmacy Course.

12. The petitioner has submitted that on 17.05.2019, it received a letter/order of the AICTE dated 07.05.219 whereby the AICTE reiterated all the events prior to 25.04.2019 and passed the order and granted EOA with 40% reduction in intake for existing B. Pharma

Course and that the LOR for proposed D.Pharma Course for the academic year 2019 and that the EVC team of the AICTE vide report dated 11.03.2019 noted Nil Deficiency for the Diploma Course and as per APH 2019 -20 contrary to their own rule denied to grant the LOA to the Diploma Pharmacy Course.

13. Along with the writ petition was CM APPL.28071/2019 filed by the petitioner seeking grant of ex-parte relief seeking that the ex-parte order be passed against the respondent for grant of an approval to the petitioner institute running the B. Pharma course on or before 30.06.2019.

14. The respondent no.1 through the affidavit filed on behalf of the respondent no.1 and by the respondent no.2 i.e. All India Council for Technical Education of Dr. Uday Srivastava, Assistant Director (Legal) of the respondent herein submitted to the effect that the All India Council for Technical Education has been established with a view to the proper planning and co-ordinate development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation of proper maintenance of norms and standards in the technical education system and for matters connected therewith.

15. The respondent further submits that Section 10 of the AICTE Act provides the functions the Council to include taking of steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and that further Section 10 (k) of the AICTE Act empowers the AICTE to grant

approval for starting new technical institutions and for introduction of new courses or programs in consultation with the agencies concerned.

16. The respondent submits that it has also framed the regulations for grant of approval for starting new technical institutions, introduction of courses, programs and increase/variation of intake capacity of seats for the courses or programs of existing technical institutions and that the AICTE further evolved a Handbook for Approval Process (ARM) which details out the procedure as well as the minimum conditions which the institute must fulfill in order to seek approval for either starting new technical institutions, introduction of courses, programs and increase/variation of intake capacity of seats for the courses or programs of existing technical institutes.

17. The respondent does not deny that the approval for running the B. Pharma course was accorded to the petitioner for the academic year 2015-16 for starting a new technical institute for running the pharmacy course and the AICTE had granted extension of approval till the AY 2018-19.

18. The respondent has submitted that the report of the SHC was placed before the Standing Appellate Committee, a high powered Committee, headed by a Retd. High Court Judge and it recommended no admission to the petitioner institute and the petitioner challenged the report of the SHC, which was considered by the Standing Appellate Committee, which held its meeting on 18.01.2019 and after scrutinizing the documents, the SAC recommended the extension of

approval to the petitioner institute with 40% reduction in the same for the B.Pharma course.

19. The respondent submits that as per the procedure under Chapter II of APH, an Expert Visit Committee conducted the visit to the institute on 11.03.2019 to verify the requisite infrastructure and amenities for the new diploma course with 60 intake, which the petitioner had applied and also the AICTE submits that vide circular dated 25.03.2019, the AICTE directed the institute to appear before the Standing Hearing Committee on 29.03.2019 and since the present EVC did not point out any deficiency, the petitioner institute chose not to appear before the SHC.

20. The respondent submits that earlier deficiencies had been pointed out by the EVC in its report dated 14.09.2019 for which the institute was directed to appear before the Standing Appellate Committee on 30.03.2019 for which an email dated 28.03.2019 was sent to the petitioner institute but that the petitioner institute did not appear before the SAC on 30.03.2019 and the SAC recommended 'No EOA' for the year 2019-20. The respondent has submitted that in order to be fair and just, the Competent Authority directed that the petitioner institute might be given another opportunity for hearing before the SAC on 12.04.2019 and the representatives of the petitioner Mr. Zaiduddin, Secretary and Shri Rakesh, Office Assistant appeared before the SAC and presented their view point with evidences and after examining the same, the SAC observed that due to deficiencies as pointed out by the first EVC and documents submitted, the same

were not accepted and recommended "No EOA" for D. Pharma whilst maintaining status quo for B. Pharma for the academic year 2019-20.

21. The respondent has further submitted that before taking a final view, the Competent Authority directed the recommendations of the SAC to be reviewed by the SAC Review and a meeting of the SAC Review was conducted on 20.04.2019 and after examining the documents already submitted by the petitioner, the SAC Review observed that after going through the EVC report dated 14.09.2018 relating to existing B. Pharma course & SHC recommendations dated 18.01.2019 and the EVC report dated 11.03.2019 (Chapter I) and SAC recommendations dated 30.03.2019 (No EOA in absence of institution) and the Review SAC dated 20.04.2019, reviewed the entire matter and recommended

- (i) EOA for AY 2019-20 B. Pharma Course with 40% intake (reduced) and
- (ii) LOR for D. Pharma proposed course and the AICTE issued an order dated 25.04.2019 to that effect

and that after examining the entire matter in the facts and circumstances as detailed through its counter affidavit and in terms of the provisions/guidelines for the Approval Process Handbook AY 2019-20 and the terms and conditions mentioned in the Letter of Approval, the AICTE decided to grant the EOA to the institute for the AY 2019-20 with 40% reduction in existing intake of B. Pharma course and LOR for proposed D. Pharma for the AY 2019-20 and

accordingly a speaking order dated 07.05.2019 was issued by the AICTE to the Institute.

22. The respondent has submitted that as per the procedure laid down in the Approval Process Handbook, every report is uploaded on the portal so that the institute might be aware of its deficiencies and further course of action to be taken by the institute and that the petitioner institute was informed through email dated 09-04-2019 to appear before the scheduled SAC on 12.04.2019 to resolve the deficiencies and that the deficiencies were also mentioned in the email. It was thus submitted on behalf of the respondent that it have had given enough opportunities to the petitioner institute before the EVC, before the Standing Hearing Committee and before the SAC but the petitioner institute was not able to prove that it had rectified all the deficiencies as pointed out by EVC, SHC and SAC.

23. The respondent further submits that in terms of the verdict of the Hon'ble Supreme Court in ***Parshvanath Charitable Trust Vs. All India Council for Technical Education (2013) 3 SCC 385***, the Hon'ble Supreme Court has laid down the last date for giving approval to an institute as 30th April of each academic year and that beyond it, the same, the AICTE is not authorized to do any act and it has further been submitted on behalf of the respondent that in LPA No.540/2015 in ***ACN College of Pharmacy Vs. All India Council for Technical Education*** it has been laid down to the effect:

"In Parshvanath Charitable Trust vs. AICTE, (2013) 3 SCC 385 the Supreme Court prescribed the time schedule

and directed that the same shall be strictly adhered to by all concerned and none of the authorities shall have the power or jurisdiction to vary the dates of admission. Admittedly, the last date for grant of approval by AICTE has expired long back on 30.04.2015 and, therefore, the learned Single Judge has rightly declined to interfere despite the finding of SAC that there was no deficiency in the application of Appellant. We, therefore, do not find any justifiable reason to hold that the order under appeal suffered from any error warranting interference in an intra Court appeal."

24. The respondent has further submitted that the verdict of the Hon'ble Division Bench of this Court in ***ACN College of Pharmacy Vs. All India Council for Technical Education*** was followed in LPA272/2017 titled as ***Children's Academic Society Vs. All India Council for Technical Education***. The respondent has thus sought that the petition be dismissed in as much as it devoid of all merits.

25. Arguments have been addressed on behalf of either side by their learned counsel.

26. At the outset, it is essential to observe that the prayer made on behalf of the petitioner seeks the directions to the AICTE to issue the EOA with 100 seats for the B.Pharma course or to give another opportunity for hearing before the SAC for the academic year 2019-20 and also seeks that the impugned orders dated 25.04.2019 & 07.05.2019, vide which the petitioner institute was not granted approval for conducting the D. Pharma course for the year 2019 be quashed in as much as in terms of the verdict of the Hon'ble Supreme Court in ***Parshvanath Charitable Trust Vs. All India Council for Technical Education*** in Civil Appeal No.9048/2012, a verdict dated

13.12.2012, the schedule as directed therein for the process of approval or refusal by the AICTE of the recognition to be accorded to an institute for a course for an academic year is 30th April of that academic year and in terms of the mandatory directions issued by the Hon'ble Supreme Court vide the said verdict observing thereby *inter alia* that no person or authority shall have the power or jurisdiction to vary the schedule prescribed by the Hon'ble Supreme Court. It is essential to observe that the said schedule put forth in para 38 of the said verdict is to the effect:

<i>Sl. No.</i>	<i>Stage of processing application</i>	<i>Last date by which the processing should be completed.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>1.</i>	<i>For receiving proposals by Bureau RC.</i>	<i>31st December</i>
<i>2.</i>	<i>For the Bureau RC to screen the application and (a) to return the incomplete applications to applicants, and (b) to forward the applications to (i) State Government concerned (ii) University or State Board concerned, for their comments (iii) Regional Officer to arrange visits by Export Committees, and (iv) Bureaus MPCD, BOS and RA</i>	

	<i>for their comments.</i>	
3.	<i>For receiving the comments is from (i) the State Government (ii) the University or State Board and (iii) the Regional Committee based on the Expert Committee's report and (iv) from the Bureaus MPCD, BOS and RA.</i>	<i>15th March</i>
4.	<i>For consideration of the comments from the State Governments, Universities or State Boards, Regional Committees, and Bureaus of the Council by the State level Committee.</i>	<i>31st March.</i>
5.	<i>For recommendations to be made by the Central Task Force.</i>	<i>15th April</i>
6.	<i>For communicating the final decision to the State Government or the University Grants Commission, under limitation to the Regional office, Director of Technical Education, applicant, University or State Board.</i>	<i>30th April.</i>

and the Hon'ble Supreme Court vide the said judgment vide paras 39 & 40 further observed to the effect:

“39. This Schedule has statutory backing. Thus, its adherence is mandatory and not directory.

40. Non-adherence of this Schedule can result in serious consequences and can jeopardize not only the interest of the college students but also the maintenance of proper standards of technical education. The authorities concerned, particularly the AICTE, should ensure proper and timely action upon the applications submitted to it. It must respond to the applicant within a reasonable time period and should not let the matter drag till the final date giving rise to avoidable speculations by all stakeholders. Thus, it would be appropriate for these authorities to bring to the knowledge of the parties concerned, the deficiencies, if any, and the defects pointed out by the Expert Committee during the inspection within three weeks from the date of such inspection or pointing out of defects, as the case may be. For better administration, the AICTE should also state the time within which such deficiencies/defects should be removed by the applicant. This will help in building of a coherent and disciplined method of working to ensure the proper implementation of the entire formulated scheme of technical education. The AICTE will not have any jurisdiction or authority to issue approval for commencement of a new course or for additional intake of students beyond 30th April of the year immediately preceding the commencement of an academic year.”

27. The observations in para 48 of the said verdict of the Hon'ble Supreme Court are to the effect:

“48. For the reasons afore-recorded, we find no merit in both the appeals afore-referred. While dismissing these appeals, we issue the following directions :

(i) Both grant/refusal of approval and admission schedule, as aforesaid, shall be strictly adhered to by all the authorities concerned including the AICTE, University, State Government and any other authority directly or indirectly connected with the grant of approval and admission.

(ii) No person or authority shall have the power or jurisdiction to vary the Schedule prescribed hereinabove.

...
...
...

(vi) If the appellate authority decides the matter prior to 30th April of the concerned year and grants approval to a college, then alone such institution will be permitted to be included in the list of colleges to which admissions are to be made and not otherwise. In other words, even if the appellate authority grants approval after 30th April, it will not be operative for the current academic year. All colleges which have been granted approval/affiliation by 10th or 30th April, as the case may be, shall alone be included in the brochure/advertisement/website for the purpose of admission and none thereafter."

28. The prayers made by the petitioner herein are for consideration of recognition of the petitioner institute for the extension of approval for 100 seats for the B.Pharm course in relation to which the 100 seats have been reduced to 60 seats vide the impugned orders with a 40% reduced intake and the approval for conducting of a new academic course of D.Pharm course for the academic year 2019-20 has been declined vide the impugned orders. The prayers made by the petitioner cannot at all be granted in view of the categorical verdict of the Hon'ble Supreme Court in ***Parshvanath Charitable Trust (supra)***. The prayer made by the petitioner also seeking that a further

opportunity for hearing be granted to the petitioner before the SAC for the academic year 2019-20 also for such an approval to be accorded for increased intake in the B.Pharma course and as well as for the conducting of the new D.Pharma course also thus cannot be granted.

29. This is so, as rightly contended on behalf of the respondent, the verdict of the Hon'ble Division Bench of this Court in ***ACN College of Pharmacy Vs. All India Council for Technical Education*** in LPA 540/2015, a verdict dated 07.01.2016 and in LPA272/2017 titled as ***Children's Academic Society Vs. All India Council for Technical Education***, a verdict dated 09.08.2017, makes it apparent as laid down in ***ACN College of Pharmacy (supra)*** vide para 5 to the effect:

*“5. In **Parshvanath Charitable Trust Vs. AICTE, (2013) 3 SCC 385** the Supreme Court prescribed the time schedule and directed that the same shall be strictly adhered to by all concerned and none of the authorities shall have the power or jurisdiction to vary the dates of admission.*

Admittedly, the last date for grant of approval by AICTE has expired long back on 30.04.2015 and, therefore, the learned Single Judge has rightly declined to interfere despite the finding of SAC that there was no deficiency in the application of Appellant. We, therefore, do not find any justifiable reason to hold that the order under appeal suffered from any error warranting interference in an intra Court appeal.”

30. Apart from the same, the deficiencies noted by the EVC on 14.09.2018 in a visit made to the petitioner institute are detailed as follows:

<i>Sl. No.</i>	<i>Deficiencies noted by EVC on 14.09.2018</i>	<i>Observation of SHC on 25.10.2018</i>
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1	Total No. of faculty members required as per application - 23 but available only 12 Faculty is short	No document Submitted. Deficiencies Exists
2	<u>Instructional Area</u> Animal House – Not accepted/Not available	
3.	<u>Amenities Area</u> Boys Common Room [Smaller in size) – Not accepted/Not available First aid cum Sick Room - Not accepted/Not available	
4.	Girls common Room [Smaller in size) – Not accepted/Not available	No document submitted Deficiencies still exists.
5	Group Insurance- Not accepted/Not available	
6	Insurance of students- Not accepted/Not available	
7	Implementation of Food safety and standards Act, 2006 in the Institutions – Not accepted/Not available	
8	Digital Payment for all financial Transactions as Per MHRD directives – Not accepted/Not Available	

9	Total faculty (UG+PG+Diploma) - Not accepted/Not available	No document submitted Deficiencies exists.
10	Minimum 80% Faculty Regular faculty - Not accepted/Not Available	
11	Whether salary for all the faculty members are paid as per Sixth Pay Commission recommendations - NO	
12	Whether the payment of salaries are through RTGS/ NEFT/ Online - NO	
13	TDS certificate of all the faculty members - NO	
14	Attrition rate is very high	
15	Cadre ratio is not maintained	

Final Recommendation of the Standing Hearing Committee

On 14/09/18 EVC reported deficiencies in Janta College of Pharmacy shown at previous pages, which have been put up before this SHC.

Md. Younus, an Asstt. Prof. of the Institution appeared before this SHC, an authorized representative, but has miserably failed to produce any paper in respect of the deficiencies pointed out in such circumstance, this SHC comes to conclusion that all the noted deficiencies exist and have not been rectified.

Accordingly it is recommended that the institution be put under “No Admission” category for the A.Y. 2019-20.”

31. The members of the Standing Hearing Committee who have signed the said report have observed that there is no document that was submitted in the hearing on 25.10.2018 and the deficiencies continued to exist. The petitioner institute was thus put to the category of ‘No Admission’ by the Standing Hearing Committee on 25.10.2018.

32. On the appeal filed by the petitioner herein against the observations of the Standing Hearing Committee dated 25.10.2018, the Competent Authority of the Standing Hearing Committee gave an opportunity to the petitioner herein to be present before the Committee and the observations/ recommendations of the SAC were to the effect:

“

<i>SI No.</i>	<i>Deficiencies noted by EVC on 14.09.2018</i>	<i>Observation of SHC on 25.10.2018</i>	<i>Observation of SAC on 18.01.2019</i>
<i>1</i>	<i>Total No. of faculty members required as per application - 23 but available only 12 Faculty is short</i>	<i>No document submitted Deficiencies still exists.</i>	<i>‘Status quo’ in respect of faculty is existing</i>
<i>2</i>	<i><u>Instructional Area</u> Animal House – Not accepted/Not available</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Not mandatory.</i>
<i>3.</i>	<i><u>Amenities Area</u> Boys Common Room [Smaller in</i>	<i>No document submitted Deficiencies</i>	

	size) – Not accepted/Not available First aid cum Sick Room - Not accepted/Not available	still exists.	Photographs shown without furniture. Not accepted.
4.	Girls common Room [Smaller in size) – Not accepted/Not available	No document submitted Deficiencies still exists.	
5	Group Insurance- Not accepted/Not available	No document submitted Deficiencies still exists.	Copy submitted. Accepted.
6	Insurance of students- Not accepted/Not available	No document submitted Deficiencies still exists.	Copy submitted. Accepted.
7	Implementation of Food safety and standards Act, 2006 in the Institutions – Not accepted/Not available	No document submitted Deficiencies still exists.	Copy submitted. Accepted.
8	Digital Payment for all financial Transactions as Per MHRD directives – Not accepted/Not available	No document submitted Deficiencies still exists.	All payments are not made through digital mode.
9	Total faculty (UG+PG+Diploma) - Not accepted/Not available	No document submitted Deficiencies still exists.	Deficiency exists.
10	Minimum 80% Faculty Regular	No document submitted	-do-

	<i>faculty - Not accepted/Not Available</i>	<i>Deficiencies still exists.</i>	
11	<i>Whether salary for all the faculty members are paid as per Sixth Pay Commission recommendations - NO</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Deficiency exists.</i>
12	<i>Whether the payment of salaries are through RTGS/ NEFT/ Online - NO</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Not submitted.</i>
13	<i>TDS certificate of all the faculty members - NO</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Not presented.</i>
14	<i>Attrition rate is very high</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Noted</i>
15	<i>Cadre ratio is not maintained</i>	<i>No document submitted Deficiencies still exists.</i>	<i>Not being followed.</i>

Final Recommendation of the Standing Hearing Committee

In view of the deficiencies that exist as per pre pages E.O.A. is recommended with 40% (Forty percent) reduction in approved intake.”

33. The petitioner herein submits that the report of the Expert Visiting Committee on 11.03.2019, institute for the running of the D. Pharma course was to the effect that ‘Nil Deficiency’. The petitioner

thus submits that approval for the running of the D.Pharma course ought to have been granted by the AICTE to the petitioner institute and it has been submitted on behalf of the petitioner that deficiencies for the B. Pharma course pursuant to which, there has been a reduction in intake of 40% in the B.Pharma cannot be applied for the D.Pharma course.

34. As regards this contention, it is essential to observe that the final recommendations of the Standing Appellate Committee of the date 30.03.2019 by which 'No Extension of Approval' was granted for the academic year 2019-20 categorically indicate that the deficiencies as noted on 14.09.2018 had continued to exist. Even though, some of the deficiencies were removed as indicated vide the final recommendations of the Standing Appellate Committee dated 18.01.2019, the deficiencies in the number of faculty, deficiencies in the amenities area i.e. of the boys common room and girls common room, first aid cum sick room, existence of the total faculty, lack of 80% regular faculty, lack of payment of salary to faculty (salary as per the 6th Pay Commission), cadre ratio not being followed and rate of admission being very high and that the TDS certificate of all members of the faculty had not been produced and it has not been established also that the payment of salary was made through RTGS/ NEFT/ Online mode thus to bring forth the existence of deficiencies, in as much as the pertinent aspect, which cannot be overlooked is that in terms of the eligibility requirements for an existing institute running a degree course in pharmacy to apply for running a course of diploma in pharmacy, as per Regulation 2.9.1, the institution must have a

requisite built up area, faculty, student ratio and another requirements in terms of the Approval Process Handbook. The Regulation 2.9.1 reads to the effect:

- “a. The existing Institutions offering Diploma in Pharmacy shall be permitted to start Degree in Pharmacy and vice-verse in the same Institution provided that the Built-up area, Faculty: Student ratio and other requirements shall be fulfilled as specified in the Approval Process Handbook.*
- b. The Institution shall apply on AICTE Web-Portal along with the additional documents as per Appendix 17 of Approval Process Handbook.”*

35. Reliance was placed on behalf of the respondent on Regulation 2.8.2 (a & b), which read to the effect:

- “a. The existing Institutions where Course(s) in Engineering and Technology/ Planning/ Hotel Management and Catering Technology/ MCA/ Management Programme are already in existence shall be eligible to apply on AICTE Web-Portal for approval of respective Integrated Degree. It is mandatory for the existing Engineering and Technology/ Planning/ Hotel Management and Catering Technology/ MCA/ Management Course to be accredited by NBA to start the respective Integrated Degree Course.*
- b. Approval shall be considered only to those Institutions where there is “Zero Deficiency” based on Self-Disclosure.”*

to submit that there is a requirement of ‘Zero Deficiency’ based on self-disclosure, only whereafter the approval can be accorded to an institute to start a integrated degree course.

36. Though undoubtedly, Regulation 2.8.2 (b) relates to an integrated degree course and Regulation 2.9.1 relates to starting a Diploma in Pharmacy, nevertheless as laid down by the Hon'ble Supreme Court in ***Parshvanath Charitable Trust (supra)*** compliance of conditions for approval as well as regulations and provisions of the AICTE Act being an unexceptional condition, which is aimed at ensuring attaining and maintaining of competent recognized global standards in Technical Education, strict adherence to prescribed parameters for imparting educational courses in the area of technological advances is apparently aimed at to protect the vital interest of students as rightly contended on behalf of the respondent.

37. Furthermore, it is essential to observe that this Court is not seized of the matter in the appellate jurisdiction over the findings of the Review SAC as laid down by the Hon'ble Supreme Court in ***West Bengal Central School Service Commission & Ors. vs. Abdul Halim & Ors.*** in Civil Appeal No. 5824/2019 vide paras 27 to 33, which read to the effect:

“27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.

28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to

itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty.

29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan vs. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same

may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of the respondent No.2.”

38. In the circumstances, it is not considered appropriate by this Court to vary the administrative order of the SAC Review Committee of the AICTE. It would be open, however, to the petitioner to seek redressal before the AICTE in relation to its grievances seeking an enhanced intake in B.Pharm Course as well as according of recognition for the D. Pharma course for the next academic session 2020-21.

39. The petition and the accompanying application CM APPL.28071/2019 are accordingly dismissed.

40. Copy of the judgment be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J.

JULY 31st, 2019/vm