

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 08.08.2019

Date of decision: 09.08.2019

W.P.(C) 7390/2019 & CM No. 30801/2019

L.R. COLLEGE OF PHARMACY

..... Petitioner

Through: Mr. Sanjay Sharawat & Mr. Divyank
Rana, Advocates.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

..... Respondent

Through: Mr. Anil Soni & Mr. Abhinav Tyagi,
Advocates for AICTE.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner- Institute seeks that it be declared that it is entitled to start the Pharmacy Courses namely “Diploma in Pharmacy” and “Bachelor of Pharmacy” on the basis of approval having been obtained from the Pharmacy Council of India and without obtaining approval from the respondent in terms of circular dated 07.06.2019 with the alternative prayer that the respondent be directed to the grant of approval to the petitioner for “Diploma in Pharmacy” and “Bachelor of Pharmacy” courses with an intake of 60 and 100 seats respectively for the academic session 2019-20 at the

earliest and permit it to admit the students and start courses from the said academic session.

2. The petitioner submits that it is an unaided and self financed institution which was established by a registered trust with the object of imparting education in technical courses and had applied to the respondent- AICTE for seeking approval for “Diploma in Pharmacy” and “Bachelor of Pharmacy” courses with an intake of 60 and 100 seats respectively for the academic session 2018-19 and that the respondent granted approval of the said course vide letter dated 30.04.2018 for the academic session 2018-19. The petitioner submits that it was also required to obtain approval from the Pharmacy Council of India (PCI) and applied for the same and that the Pharmacy Council of India (PCI) also conducted an inspection and granted approval on 16.03.2018 for the academic session 2018-19. The petitioner submits that thereafter, it had to obtain affiliation from the Haryana State Board of Technical Education (HSBTE) and that Haryana State Board of Technical Education (HSBTE) wrote a letter dated 15.05.2018 to the AICTE alleging that at the time of inspection, the building shown for the petitioner college was the same as that of another college named "SEHRAWAT COLLEGE OF PHARMACY" which college was approved by the AICTE in the year 2015 and thus, the AICTE on the basis of this letter issued a show cause notice to the petitioner on 27.06.2018 to submit a reply within 10 days and that the petitioner could thus not start the course from the academic session 2018-19.

3. The petitioner submits that on 16.07.2018, it submitted its reply stating that the two colleges are totally different and were situated at a distance of about 2-3 Kms and were being run by different entities and that after

considering the reply submitted by the petitioner, the AICTE decided to conduct the inspection to verify the correctness of the facts stated by the petitioner in its reply which was communicated by AICTE to the petitioner vide letter dated 27.08.2018.

4. The petitioner submits that vide letter dated 31.01.2019, the Haryana State Board of Technical Education (HSBTE) considered the request of the petitioner and consented to grant affiliation for the academic session 2019-2020 and that on 25.03.2019, a joint inspection of the petitioner was conducted by the AICTE and HSBTE and that in the meanwhile the PCI considered the application of the petitioner in its meeting held on 09th and 10th April 2019 and granted approval for the academic session 2019-20 for both the courses. The petitioner submits that vide an email dated 19.04.2019, the AICTE called the petitioner for scrutiny of documents on 22.04.2019 and after the scrutiny of the documents by the respondent-AICTE, the respondent- AICTE vide its report dated 22.04.2019 recommended the case of the petitioner for grant of approval for Diploma in Pharmacy and the copy of the EVC Report of the AICTE dated 22.04.2019 has been annexed with the petition as Annexure-P9, as per which, it was reported that the institute had adequate facilities and infrastructure for starting a diploma programme in Pharmacy.

5. The petitioner submits that even after the said positive recommendation, the AICTE did not issue a letter of approval for the academic session 2019-20 and thus, the petitioner filed W.P.(C) 5333/2019 and vide order dated 14.05.2019, the respondent after the filing of that writ petition, placed the petitioner under the “No Admission Category” for the

academic session 2019-20. The said order dated 14.05.2019 of the respondent annexed as Annexure-P10 to the petition is to the effect:-

"F. No. AICTE/AB/NWR/PID 1-3707498591/2019-20 Dated: 14/05/2019

ORDER

- 1. Whereas, the AICTE is a statutory body established by AICTE Act, 1987. The said Act "provides for establishment of an All. India Council for Technical Education with a view to the propel planning and coordinated 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."*
- 2. Whereas, Section 10 of the AICTE Act prescribes the function of the Council and mandates that it shall be the duty of the Council to take all necessary steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards. 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 programmes in consultation with the agencies concerned.*
- 3. Whereas, in order to discharge its duties in accordance with the provisions contained in the AICTE Act the AICTE has framed the regulations for grant of approval for starting new technical Institutions, introduction of courses or programmes and increase / variation of intake capacity of seats for the courses or programmes of existing Technical Institutions. The AICTE has also evolved a Hand book for approval process which details out the procedure as well as minimum conditions which an institute must fulfil in order to seek approval for either starting new Technical institutions or for introduction of courses / programmes as increase/ variation of intake capacity of seat for courses / programmes as well as existing Technical Institute.*
- 4. Whereas, L R College of Pharmacy (PID1-3707498591), Hathin, Pahval, Haryana. The institute was granted LOA for A/Y 2018-19 for running Pharmacy Programmes (UG & Diploma level).*

5. Whereas, the council has been received a letter dated 15.05.2018 from Secretary, Haryana State Board of Technical Education (HSBTE), Panchkula regarding non-grant of provisional affiliation. in respect of the institute on the ground that before considering Provisional affiliation for A/Y 201.8-19, an EVC was conducted to the institute on 09.05,2018 by HSIBTE, Panchkula and it was observed that building shown for the proposed L R College of Pharmacy is same as that of Sehwat College of Pharmacy approved by AICTE and affiliation to HSBTE.
6. Whereas, based on the complaint of HSBTE, Panchkula, SCN dated 27.06.2018 was issued to the institute. The institute has denied the allegation made in complaint vide its reply letter dated 16.07.2018.
7. Whereas, the matter was placed before Standing Hearing Committee on 13,08,2018 for observation/ recommendation- The representative of the institute was also present before the committee. The committee recommends that a joint EVC by AICTE and HSBTE be conducted simultaneously at the cost of Institute.
8. Whereas, a joint EVC was conducted by AICTE and Dr. Sultan Singh, GOAF, HSBTE to the institute on 25.03.2019, which contains deficiencies. The EVC report has been uploaded on portal.
9. The EVC report was placed before Standing Hearing Committee on 06.04,2019 for recommendation. The representatives of the institute were also present before the SHC. The recommendation of SHC is as follows:

Recommendation:

"Joint inspection was to be conducted by AICTE with HSBTE to dispose off the instant case wherein, it was to be ascertained that whether the building for the L.R. College of Pharmacy and Sehwat College of Pharmacy are same. From the perusal of EVC report the aforementioned aspect could not be ascertained. Further, the HSBTE representative in his letter dated 25.03.2019 has expressed his reservation about starting diploma course in the same building.

In the aforementioned circumstances, it is recommended to conduct simultaneous scrutiny with EVC for both the institute viz. LR. College of Pharmacy and Sehwat College of Pharmacy by same teams before considering any future extension of approval.

10. Whereas, a simultaneous Scrutiny with EVC was conducted by R.O. both of the following institutes, which contains deficiencies.

1. L. R. College of Pharmacy (PID 1-3707498591), Hathin, Palwal, Haryana

2. Sehrawat College of Pharmacy (PID1 ^2491139531 j, Hathin, Palwal, Haryana.

11. Whereas, the Institute was given an appeal before Standing Appellate Committee (SAC) on 29.04.-2019. The observations and recommendation of SAC are as under: -

SI. No.	Deficiency noted by Scrutiny/KVC Committee	Observations and supporting proof verified by Standing Appellate Committee to clear the deficiencies
1.	Proof of working capital (funds) (Refer APH 2018-19)- Not presented	Not produced. Not Accepted
2.	Certificate issued by bank manager regarding financial status of application (Refer-APH 2018-19) -Not presented	
3.	Details of Classification of Land (Mega-/Metro/Urban/Rural) Certificate by the Competent Authority), Land Conversion Certificate & Land Use Certificate arc same.	
4.	Details of Site Plan and Complete Building Plan of proposed Technical Institute prepared by an Architect registered with Council for	Documents submitted. Accepted.

	Architecture (COA)/licensed surveyor and duly approved by the Competent Plan Sanctioning Authority of. The concerned State/UT Admission are same	
5.	Shortfall in Classroom, Laboratory and Seminar Hall- Pharmacy	
6.	Shortfall in Classroom - Pharmacy (Diploma)	
7.	Classroom, Tutorial Rooms, Class Room-tutorial Room, Laboratory, Machine Room, Instrument Room and Laboratories-All -- Not available	
8.	Barrier free Environment - Not Accepted/ Not Available	Undertaking submitted. Accepted.
9.	Group Insurance – Not Accepted/ Not Available	
10.	Insurance for Students - Not Accepted/ Not Available	
11.	Provision to watch MOOCS courses - Not Accepted/ Not; Available	
12.	Implementation of Food Safety and Standards Act, 2006 in the Institution-Not Accepted/ Not Available	Undertaking submitted. Not Accepted.
13.	Appointment of Student Counselor - Not Accepted/ Not Available	
14.	Implementation of Unnat Barat Abhiyan – Not Accepted/ Not Available	

15.	<i>Establishment of Anti Ragging Committee - Not Accepted/ Not Available</i>	
16.	<i>Establishment of committee for SC/ST – Not Accepted/ Not Available</i>	
17.	<i>Establishment of internal complaint committee (ICQ committee as per section 4 of Sexual Harassment of Women at workplace (prevention prohibition and redressal) Act,2013 - Not Accepted/ Not Available.</i>	<i>Not submitted. Not</i>
18.	<i>Establishment of grievance redressal committee in the university and appointment of OMBUDSMAN by the university-Not Accepted/ Not Available</i>	<i>Accepted.</i>
19.	<i>University Industry Cell - Not Accepted/ Not Available</i>	
20.	<i>National Academic depository (NAD) as per MHRD directives - Not Accepted/ Not Available</i>	
21.	<i>Details of Principal/ Director/Head of the Institution - Not Accepted.</i>	<i>Documents submitted. Accepted</i>
22.	<i>Details of Faculty - Not Accepted</i>	<i>Not submitted. Not Accepted</i>
23.	<i>Compliance of AICTE sixth pay commission (please also verify and collect the TDS Certificate to verify the claim of the Institution)</i>	<i>Undertaking submitted.</i>

	<i>-Whether salary for all the faculty members are paid as per sixth pay commission recommendations</i> <i>-Whether the payment of salaries are through RTGS/NEFT/Online</i>	
24.	<i>In case of institution leaving approval to admit PIO/ FN/ OCI category -Whether hostel facilities are available for accommodating students of FN/PIO/OCI category. Details of the hostel (number of rooms, pax, per room, mess facility, internet and other facilities</i>	<i>Not applicable.</i>
25	<i>List and details of hard copy of International Journals subscribed.</i>	<i>Not submitted. Not Accepted</i>
26	<i>Remarks of Expert Visit Committee; The institute has adequate facilities of Infrastructure for starting a diploma programme in Pharmacy.</i>	<i>Deficiencies noted. Not Accepted.</i>

Recommendation of SAC-

"Based on the current financial status of the applicant and in view of laps number of deficiencies in identification of faculty even the Principal and provision of facilities, it is recommended to place the institution under 'No Admission' category."

12. In view of the above, the compliance submitted by the institute was considered as per rules. In view of the record and the deficiency **identification of faculty even the Principal and provision of facilities etc.** as above pointed out by the Standing Appellate Committee (SAC) Chaired by a Former Justice (Retd.) in accordance with the Rule 13.7 of Appendix 13 of APHB 2019-2020 and in compliance with the judgment of the Hon'ble Supreme Court in the case of MAA Vaishno Devi as reported in (2013) 2 SCC 617 at para 54 and Parshwanath case reported in (2013) 3 SCC 385 para 28 which explicitly states **“compliance with the conditions for approval as well as Regulations and provisions of the AICTE Act is an unexceptionable condition”**, which aim to ensure for attaining and maintaining of competitive, recognized global standards in Technical Education. It is undeniably essential to ensure strict adherence to the prescribed parameters for imparting of such educational courses including the requisite infrastructure, which is ultimately aimed at protecting, the vital interests of our students.
13. Therefore, after examining the entire matter in the facts and circumstances mentioned herein above,, and in terms of the provisions of the Approval Process Hand Book 2019-20 and also the terms and conditions mentioned in the Letter of Approval, Council has decided to place **LR College of Pharmacy "(PID 1-3707498591), Hathin, Pahval, Haryana under “No admission category”** for the academic year 201-9.-20.
14. It must be further noted, that clause 6.9 of the Regulations 2018 prohibits grant of any conditional approval and clause 2.24 of Chapter of the Approval Process Handbook 2019-20 read with clause 15 of Regulations, 2018 mandate Extensions of Approval for the Academic year 2019-20 shall not be granted after 30th April, 2019 in compliance with the order of the Hon'ble Supreme Court of India dated. 13.12.2012(CA No. 9048/2012).

15.It may be noticed that clause 2.5.3 of Approval Process Handbook 2019-20 is implemented on the course run by the Institute, wherever applicable.

This has the approval of the Competent Authority.”

6. The petitioner submits that it challenged the said order dated 14.05.2019 by filing W.P.(C) 5390/2019 and both the writ petitions filed by the petitioner were listed for hearing on 07.06.2019, on which date the petitioner withdrew W.P.(C) No.5333 of 2019 in view of having filed W.P (C) No.5390 of 2019 and on 07.06.2019 W.P.(C) No.5390 of 2019 was adjourned to 12.06.2019. The petitioner further submits that in terms of the verdict of the Hon'ble Supreme Court in ***“Parshavanath Charitable Trust & Ors vs. AICTE & Ors” [(2013) 3 SCC 385]***, a fixed time schedule has been directed by the Hon'ble Apex Court, according to which the AICTE was required to pass final approval orders in respect of all cases latest by 30th of April of every year and the petitioner submits that it was required to pass approval orders latest by 30.04.2019 and in order to seek extension of time for this academic session, the AICTE filed an application before the Hon'ble Supreme Court for seeking extension of time till 10.06.2019 and the said application was allowed vide order dated 06.06.2019 and the time was extended till 10.06.2019.

7. The petitioner submits that thereafter that on 07.06.2019 the AICTE issued a circular and decided to grant approval to all pharmacy colleges which had obtained approval from the PCI for academic session 2019-2020 and for this purpose it was stated that all such colleges would have to submit an affidavit in the prescribed format latest by 10.06.2019. The petitioner submits that it was eligible under the said circular and submitted the desired

format with the AICTE on 10.06.2019 and complied with all the requirements by said date.

8. The petitioner further submits that on 12.06.2019, W.P.(C) No.5390 of 2019 was listed for hearing before the Court and during the course of hearing, the petitioner apprised the Court about the circular dated 07.06.2019 and requested that the AICTE be directed to take a decision on the affidavit submitted by it in compliance of the said circular, which suggestion was also accepted by the counsel for the AICTE and accordingly vide order dated 12.06.2019 the writ petition was disposed of by this Court by directing the AICTE to take a decision latest by 17.06.2019 and communicate the same to the petitioner latest by 18.06.2019.

9. The petitioner submits that the order dated 12.06.2019 however, was not complied with by the respondent and the petitioner thus, filed Cont. Case (C) No.566/2019 on 02.07.2019, which was to be listed for hearing on 03.07.2019, but on the institution of the same, the AICTE i.e. the respondent passed an order dated 02.07.2019 and declined the grant of approval to the petitioner in terms of circular dated 07.06.2019 on the ground that the same applied only to new institutions and did not apply to the petitioner as it was an existing institution. The said order dated 02.07.2019 of the respondent-AICTE reads to the effect:-

"F.No. AICTE/AB/NWR/1-3707498591/2019-20 Dated 02.07.2019

ORDER

- 1. Whereas, the AICTE is a statutory body established by AICTE Act, 1987. The said Act "provides for establishment of an All. India Council for Technical Education with a view to the propel planning and coordinated 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."

2. *Whereas, Section 10 of the AICTE Act prescribes the function of the Council and mandates that it shall be the duty of the Council to take all necessary steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards. 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 programmes in consultation with the agencies concerned.*
3. *Whereas, in order to discharge its duties in accordance with the provisions contained in the AICTE Act the AICTE has framed the regulations for grant of approval for starting new technical Institutions, introduction of courses or programmes and increase / variation of intake capacity of seats for the courses or programmes of existing Technical Institutions. The AICTE has also evolved a Hand book for approval process which details out the procedure as well as minimum conditions which an institute must fulfil in order to seek approval for either starting new Technical institutions or for introduction of courses / programmes as increase/ variation of intake capacity of seat for courses / programmes as well as existing Technical Institute.*
4. *Whereas, after following established procedure as contained in Approval Process Handbook (APH) 2019-20 and based on the recommendation of the SAC held on 29.04.2019, LR College of Pharmacy (PID 1-3707498591) Hathin, Palwal, Haryana was placed under "No Admission" category due to current financial status of the institute and large number of deficiencies in identification of the faculty vide Speaking Order of even number dated 15.05.2019.*
5. *And whereas, aggrieved of the above decision of AICTE, the said Institute filed a WP (C) No.5390/2019 in the Hon'ble High Court Delhi with the following prayer:*

- a. *Issue writ or direction in the nature of mandamus to set aside the impugned order dated AICTE/AB/NWR/PID 1-3370749859/2019-20 dated 14.05.2019 passed by the Respondent and;*
 - b. *Issue writ or direction in the nature of mandamus to the respondent to allow the petitioner college to take admission in Pharmacy course for the academic year 2019-20;*
 - c. *Pass any other order or direction which are necessary in the interest of justice.*
6. *And whereas, the Hon'ble High Court of Delhi passed the order dated 12.06.2019 in the above said matter as under:-*
This is an application for withdrawal of the writ petition as the petitioner wanted to approach Hon'ble Supreme Court of India, however, it has been jointly submitted by both the parties that certain developments have taken place in the meantime. Both the counsels i.e. Counsel for L. R. College of Pharmacy and counsel for All India Council For Technical Education have submitted that Hon'ble Supreme Court was seized of many cases where approval of institutions had granted by Pharmacy Council of India (PCI) whereas there was no approval of AICTE. It was agreed to that if PCI had already granted the approval to a college, then the said education institution shall be given one chance to file affidavit before All India Council For Technical Education in terms of circular dated 07th June, 2019 and the time was granted upto 10th June, 2019.

Learned counsel for the petitioners further submits that in terms of the said circular the present petitioner has already submitted the affidavit.

Learned counsel for the respondent submits that if the affidavit has been submitted by the petitioner, same will be considered by the All India Council For Technical Education in next 4-5 days and appropriate decision will be taken.

At the request of the counsel for the petitioner, this petition is disposed off with direction to All India Council For Technical Education to take a decision on the affidavit submitted by the petitioner by 17.06.2019 and said decision be

communicated to the petitioner as well as to the counsel appearing for the petitioner by 18.06.2019.

- 7. And whereas, Sehrawat Charitable Trust VPO & The, Hathin, Distt. Palwal (Haryana) submitted an application bearing Ref. No.SCT/2019/68 dated 21.06.2019 address to the Vice Chairman AICTE requesting to consider LR College of Pharmacy as a New Institute and grant approval for the session 2019-20.*
- 8. And whereas, on examination of the facts and circumstances of the case, it has been found that in pursuance of the Hon'ble Supreme Court order dated 06.06.2019 in MA No.1068/2019 in CA No.9048 of 2012 titled as Parshvanath Charitable Trust V/S AICTE and Ors. only the new Pharmacy Institutions were asked to submit affidavit by 10th June-2019 vide circular No.AICTE & PCI/AB/Pharmacy/2019-20 dated 07.06.2019 for grant of approval to run Pharmacy Programme approved by PCI from current AY 2019-20 taking into consideration of the mutual decision taken by the AICTE & PCI*
- 9. And whereas, despite being in Chapter-II category (Existing Institute) and not being asked to submit affidavit as per the above said order of the Hon'ble Supreme Court, Sehrawat Charitable Trust, VPO & The, Hathin, Distt. Pawal (Haryana) submitted a affidavit in respect of LR College of Pharmacy for running Pharmacy Programme (B. Pharma and D. Pharma) for AY 2019-20 to RO, NWRO AICTE Chandigarh vide letter no.SCT/062/19 dated 10.06.2019.*
- 10. And whereas, on examination of the order dated 12.06.2019 passed by Hon'ble High Court of Delhi, Speaking Order dated 15.05.2019 issued by AICTE and affidavit submitted by Sehrawat Chritable Trust and order passed by the Hon'ble Supreme Court in respect of new Pharmacy Institute, the following has bene observed:-*
 - i. As per order of the Hon'ble Supreme Court, all the New Pharmacy Institute who were willing to run Pharmacy programme approved by PCI from current AY 2019-20 and shall fulfil APH norms and process laid down by AICTE before the start of the next AY 2020-21, were asked to submit an*

affidavit in this regard to respective RO by 10-06.2019 for consideration.

- ii. In the order dated 12.06.2019 passed by the Hon'ble High Court of Delhi, no direction has been passed on the prayer made in the writ petition by the L.R. College of Pharmacy.*
- iii. The direction of the Hon'ble High Court is based the decision of the Hon'ble Supreme Court dated 06.06.2019 in MA No.1068/2019 filed in CA No.9048/2012 titled as Parshvanath Charitable Trust vs. AICTE & Ors. which is for the institute applicable for the instituted applied under Chapter-I category (New Institute/ New Programme/level) and not for the Chapter-II category cases (Existing Institute)*
- iv. The Institute had itself applied for Extension of Approval for the Academic year 2019-20 under Chapter-II category (Existing Insitute) on AICTE Web Portal.*

11.And whereas, considering the fact that L. R. College of Pharmacy, Palwal, Haryana was issued LOA for New Institution in the AY 2018-19 for running Pharmacy programme (D. Pharma-60 seats and B.Pharma- 100 seats) vide latter dated 30.04.2018 and has already been placed under "No Admission" category for the AY 2019-20 due to current final status & large no of deficiencies in identification of faculty vide AICTE Speaking Order dated 15.05.2019, is not eligible for issue of fresh LOA/EOA for the AY 2019-20 in pursuance to Hon'ble Supreme Court order dated 06.06.2019 in MA No.1068/2019 filed in CA No.9048/2012 titled as Parshvanath Charitable Trust vs. AICTE & Ors. being in the Chapter-II (Existing Institute)

12.Now, therefore, after examining the entire facts & circumstances mentioned herein above, and in terms of the provisions of the approval process handbook (APH) 2019-20, the Council has decided not to accede to the request of the L.R. College of Pharmacy, VPO & The. Hathin, Distt. Pawal (Haryana) made vide letter no.SCT/2019/68 dated 21.06.2019 for allowing Pharmacy programme for AY 2019-20 as the institute belong to chapter-II category (Existing Institute) and not in chapter-I (New Institute/New Programme/Level). Hence said LR College of Pharmacy shall continue to be placed

under “No Admission” category for the Ay 2019-20 as already conveyed vide said Speaking Order dated 15.05.2019.

This has the approval of the Competent Authority.”

10. The petitioner submits that in view of the said order dated 02.07.2019, it withdrew the Cont. Case (C) 566/2019. The petitioner has further submitted that as per the schedule issued by the Haryana State Board of Technical Education (HSBTE), the counseling for academic session 2019-20 started on 13.06.2019 and will end on 14.08.2019. The petitioner submits that in ***"Tamil Nadu Private Professional Colleges Association Vs. Union of India and others"*** in W.P No.4358 of 2018, the Hon'ble High Court of Madras vide order dated 31.01.2019 has held that in as much as both the Pharmacy Act, 1948 and the AICTE Act, 1987 contain provisions regarding pharmacy education leading to duplications of regulations and considerable confusion at the field level, with it having been resolved in a joint meeting and it was unanimously agreed between the AICTE and the PCI that the AICTE Act governing the general technical education would be amended deleting 'pharmacy' from its mandate and that the pharmacy education would thereafter be governed by the Pharmacy Act, 1948, till such time the amendment takes place, the PCI and the AICTE were to jointly inspect the institutions as and when required for maintaining required standards of education and that thus, the Hon'ble High Court of Madras held that it was of the considered opinion that the decision has already been taken that the PCI would be given primacy over the AICTE instead of dual inspection and hence, it was thus better to allow the PCI to undertake inspection to find out the infrastructure facilities and then to grant the consequential approval

therein. It was also further observed vide paragraph 6 of the said verdict of the Hon'ble High Court of Madras, which reads to the effect:-

“6. Needless to mention that the petitioner need not apply to AICTE for inspection and also approval.”,

and thus, that the petitioner need not apply to the AICTE for inspection and approval.

11. The petitioner has also placed on the record the copy of the order dated 24.07.2018 of the Hon'ble Supreme Court in ***“Progressive Education Societys College of Pharmacy & Anr. Vs. The State of Maharashtra & Ors.”*** in Special Leave Petition (Civil) No.24798/2018, vide which it was inter alia observed by the Hon'ble Supreme Court that it was desirable that the Government of India should revisit the definition in Section 2g of AICTE, whether there could have been inclusion of pharmacy when it was already covered by the Pharmacy Act, 1948.

12. Notice of the petition having been served on the respondent. The respondent has put in appearance and filed its counter affidavit.

13. The basic contention of the petitioner is to the effect that in terms of the circular dated 07.06.2019 issued by the AICTE, the petitioner's institute squarely fell within the same and in as much as the said circular did not make any distinction between new and existing institutions and applied to all cases where the PCI had granted approval, in as much as the PCI had granted approval for the academic session 2019-20, the petitioner was entitled to the benefit of the said circular. The petitioner has thus, submitted that the respondent has granted permission to a large number of institutions on the basis of the circular dated 07.06.2019 even in those cases where applications have been rejected twice and that applying the said circulars differently for

new and existing institutions, the AICTE had drawn an artificial and whimsical distinction which had no basis and that the classification in relation thereto, was bad in law and liable to be quashed.

14. The petitioner has submitted that pursuant to the show cause notice dated 27.06.2018 sent to it by the AICTE in view of a complaint that had been made by the Board to the AICTE, that at the time of inspection, the building shown for the petitioner was the same as that of the another college namely "SEHRAWAT COLLEGE OF PHARMACY" which college was approved by the AICTE in the year 2015 and thus, the AICTE on the basis of this letter, had issued a show cause notice to the petitioner on 27.06.2018 and called upon the petitioner to submit a reply within 10 days, to which the petitioner submitted its reply on 16.07.2018 stating that the two colleges were totally different and were situated at the distance of about 2-3 Kms. and were being run by different entities.

15. The petitioner submits that the AICTE after considering the said reply, decided to conduct the inspection to verify the correctness of the facts stated by the petitioner in its reply and the inspection was conducted by the EVC, which gave a positive recommendation and that vide letter dated 31.01.2019, the Haryana State Board of Technical Education (HSBTE) considered the request of the petitioner and consented to grant affiliation for the academic session 2019-2020 and it has thus been submitted by the petitioner that the allegations by the Board stood vindicated and that the petitioner should get the benefit of approval granted on 30.04.2018.

16. The petitioner has further submitted that the impugned order dated 14.05.2019 passed by the AICTE was without jurisdiction and travelled beyond the scope of the show cause notice dated 27.06.2018, in as much as

the basis of that notice was to ascertain and verify the allegations made by the Board that the two institutions stated therein were the one and the same having only one building, which had been verified and found to be false and that after having arrived at the said decision, the AICTE ought not to have widened the scope of the show cause notice by passing the impugned order dated 14.05.2019 on extraneous grounds.

17. The petitioner has thus submitted that the impugned order dated 14.05.2019 is violative of the principles of natural justice. Reliance is thus, placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court as well as of this Court in ***"Inderjit Singh Pathak vs UOI" 115 (2004) DLT 375; "Tarlochan Dev Sharma vs. State of Punjab" (2001) 6 SCC 260; "Nasir Ahmed vs Assistant Custodian" (1980) 3 SCC 1; "Rama Pandey vs UOI" 162 (2009) DLT 202; "Commissioner of Income Tax, Delhi (Central)-I Vs. Contimeters Electricals Pvt. Ltd." (2009) 224 CTR (Del) 366; "ATS Infrastructure vs. Commissioner of Income Tax" (2009) 318 ITR 299 Delhi; "Ramchander vs UOI" 38 (1989) DLT 402.***

18. The petitioner has thus, put forth its submissions qua the grounds contained in the impugned order dated 14.05.2019 to submit to the effect:-

“

SI. No.	Deficiency noted by Scrutiny/KVC Committee	Submissions on behalf of the Petitioner
1.	Proof of working capital (funds) (Refer APH 2018-19)- Not presented	Remark of AICTE - Not produced. Not accepted.
2.	Certificate issued by bank manager regarding	It is submitted that the AICTE is referring to the

	financial status of application (Refer-APH 2018-19) -Not presented	APH 2018-19. The said requirements had been complied with by the
3.	Details of Classification of Land (Mega-/Metro/Urban/Rural) Certificate by the Competent Authority), Land Conversion Certificate & Land Use Certificate arc same.	Petitioner and then only the AICTE had granted approval for academic session 2018-19 vide order dated 30.04.2018. At this stage the AICTE cannot turn around and take this objection by referring to APH 2018-19. The said objection is totally baseless.
9.	Group Insurance – Not Accepted/ Not Available	Remark of AICTE - Undertaking submitted.
10.	Insurance for Students - Not Accepted/ Not Available	Not Accepted.
11.	Provision to watch MOOCS courses - Not Accepted/ Not; Available	It is submitted that the said requirements are required to be met by the Petitioner only before the commencement of the academic session which takes place after grant of approval by the AICTE. Since the AICTE has not granted approval the question of their compliance does not arise. The said objection is thus baseless.
12.	Implementation of food safely and standards Act, 2006 in the Institution-Not Accepted/ Not Available	
13.	Appointment of Student Counselor - Not Accepted/ Not Available	
14.	Implementation of Unnat Barat Abhiyan – Not Accepted/ Not Available	
15.	Establishment of Anti Ragging Committee - Not Accepted/ Not Available	Remark of AICTE - Not submitted.

16.	Establishment of committee for SC/ST – Not Accepted/ Not Available	Accepted. It is submitted that the said requirements are required to be met by the petitioner only before the commencement of the academic session which takes place after grant of approval by the AICTE. Since the AICTE has not granted approval the question of their compliance does not arise. The said objection is thus baseless.
17.	Establishment of internal complaint committee (ICQ committee as per section 4 of Sexual Harassment of Women at workplace (prevention prohibition and redressal) Act,2013 - Not Accepted/ Not Available.	
18.	Establishment of grievance redressal committee in the university and appointment of OMBUDSMAN by the university-Not Accepted/ Not Available	
19.	University Industry Cell - Not Accepted/ Not Available	
20.	National Academic depository (NAD) as per MHRD directives - Not Accepted/ Not Available	
22	Details of Faculty - Not Accepted	Remark of AICTE – Not submitted. Not accepted. It is submitted that the said requirement is required to be met by the Petitioner only after approval has been granted by the AICTE. The said objection is thus baseless.

		The relevant clause of the APH is as under:- 1.14 Appointment of Principal/ Director and Faculty in newly approved Institution/ Programme a. New Technical Institutions granted Letter of Approval shall comply with the appointment of Faculty/ Principal/ Director as the case may be, as per Policy regarding minimum qualifications pay scales etc., as prescribed in the Approval Process Handbook, b. Institutions shall appoint Faculty/ Principal/ Director, other Technical Supporting Staff and Administrative Staff strictly in accordance with the methods and procedures of the concerned affiliating University/ Board, State Government/ UT and Hon'ble Court directions, if any, and as applicable in the case of selection procedures and Selection Committees. c. The
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		information about these appointments of Staff in the prescribed Format shall also be uploaded on the Web-Portal of AICTE. d. Without the appointment of all the Faculty members and other Staff, an Institution shall not commence the Courses.
25	List and details of hard copy of International Journals subscribed.	Remark of AICTE – Not submitted. Not accepted. It is submitted that said requirement had been complied with by the Petitioner and then only the AICTE had granted approval for academic session 2018-19 vide order dated 30.04.2018. The said objection is totally baseless.
26	Remarks of Expert Visit Committee; The institute has adequate facilities of Infrastructure for starting a diploma programme in Pharmacy.	Remark of AICTE - Deficiencies noted. Not accepted. The AICTE has rejected the said recommendation of the EVC without assigning any reasons and without issuing any notice to the Petitioner.

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19. The petitioner has thus submitted that it is entitled to the relief prayed for in the writ petition on the basis of Clause 2.5.2 of the APH 2019-20 which says that EOA shall be granted on the basis of Self-Disclosure of required facilities and infrastructure availability. The said clause 2.5.2 of the APH 2019-20 reads to the effect:-

“2.5 EoA/ Break in EoA/ Restoration of Intake

2.5.2 Procedure

a. The applications received shall be processed as per the norms and procedures prescribed in the Approval Process Handbook. The Institution shall also have to adhere to the existing Central, State and Local Laws.

b. Grant of Extension of Approval is based on Self-Disclosure of required facilities and Infrastructure availability as submitted online on AICTE Web-Portal. The Council shall grant the desired approval, only after confirming that the Applicant had fulfilled all the norms and standards prescribed in Approval Process Handbook.

c. Institutions which had not applied for Extension of Approval in the preceding Academic Years shall be considered as "Break in EoA" and shall be processed for Extension of Approval upon verification of adequate Infrastructural facilities as specified in the Approval Process Handbook by an Expert Visit Committee.”

20. The petitioner submits that in terms of the EVC recommendation in its report dated 22.04.2019, it is entitled to start atleast the Diploma course and further submits that the case of the petitioner is fully covered by the verdict of the Hon’ble High Court of Madras in W.P.(C) 4358/2018 and that the petitioner is entitled to start the course on the basis of approval having been granted by the PCI and without obtaining approval from the AICTE.

21. The respondent through its counter affidavit submits that it has been established in accordance with the provisions as contained in the All India

Council for Technical Education Act, 1987 with a view to ensure the proper planning and coordinated development of the technical education system throughout the country, for promotion and qualitative improvements of such education in relation to planned quantitative growth and for the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

22. The respondent has further submitted that in terms of Section 23 of the AICTE Act, 1987 powers have been conferred on the Council to make Regulations generally to carry out the purposes of the AICTE Act, 1987 and without prejudice to the generality of such power, the Council may also frame Regulations to provide for various matters as provided under Section 23(2) of the AICTE Act, 1987 and for which the respondent has framed Regulations for grant of approval for starting new Technical Institutions and introduction of courses/ programs of existing Technical Institutions and has also evolved a Hand Book of Approval process, which details out the procedures as well as minimum conditions which an institute must fulfill in order to seek approval for either starting new Technical Institutions or for introduction of courses/ programs as increase/variation of intake capacity of seat for courses/ programs and existing Technical Institute.

23. As regards, the aspect of Section 2g of the AICTE Act, 1987 including Pharmacy in Technical Education and the reliance placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Madras in W.P.(C) 4358/2018, which was disposed of vide order dated 31.01.2019, it has been submitted on behalf of the respondent that in Cont. Case. (C) 573/2018 titled as ***“Harnam Singh College of Pharmacy Vs. Prof. B Suresh & Anr.”*** along

with other connected matters, the Hon'ble Division Bench of this Court has vide order dated 06.03.2019 directed to the effect:-

“It is submitted by learned counsel for the petitioners that in light of the statement made by the Union of India [UOI] before the Lucknow Bench of the Allahabad High Court in Seth Vishambhar Nath Educational Society Thru. President & Anr. Vs. State of UP Thru. Principal Secretary Technical Education and Ors. [Misc. Single No.15607/2018 and connected cases, decided on 03.12.2018] that the issue with respect to primacy of either of the regulatory bodies, i.e. All India Council for Technical Education [AICTE] and/or the Pharmacy Council of India (PCI) is under its active consideration and due guidelines would be issued, the petitioners do not wish to press the claims in these proceedings: it is submitted that the learned counsel has instructions accordingly to withdraw the petitions. W.P.(C) 6909/2018, 7122/2018, 7315/2018, 7320/2018 & 7363/2018 and Cont. Case [C] 573/2018 & 575/2018 are accordingly dismissed as withdrawn along with the pending applications.”

24. The respondent has further submitted that it has given sufficient number of opportunities to the petitioner's institute to produce documentary evidence for rectification of deficiencies pointed out by the Scrutiny/ EVC but that the petitioner had failed to comply with the same. *Inter alia* the petitioner submits that in as much as the last date for grant of approval by the AICTE has expired long back on 30.04.2019 in terms of the verdict of the Hon'ble Supreme Court in **“Parshavanath Charitable Trust & Ors vs. AICTE & Ors” (2013) 3 SCC 385**, followed in **“CAN College of Pharmacy Vs. All India Council for Technical Education”** in LPA No. 540/2015 by this Court, as well as in **“ACN College of Pharmacy Vs. All India Council**

for Technical Education” in LPA No.272/2017, the prayer made by the petitioner in any event, cannot be granted now.

25. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the circular dated 07.06.2019 of the respondent was categorically in relation to ***new pharmacy institutes applications*** and the petitioner even though did not start functioning in view of the non-grant of affiliation to the petitioner by the Haryana State Board of Technical Education (HSBTE) for the academic year 2018-19, as contended rightly on behalf of the respondent did not fall within the ambit of the circular dated 07.06.2019 for the extension of the date for grant of approval to it till the date 10.06.2019 in terms of the directions of the Hon’ble Supreme Court dated 06.06.2019 in M.A. No.1068/2019 in Civil Appeal No.9048/2012. **The other factum that cannot be overlooked is that the impugned order dated 14.05.2019 of the respondent categorically lists out several deficiencies as put forth by the respondent on the basis of recommendations received from the SAC i.e. Standing Appellate Committee and it has observed categorically to the effect:-**

“Recommendation of SAC-

"Based on the current financial status of the applicant and in view of laps number of deficiencies in identification of faculty even the Principal and provision of facilities, it is recommended to place the institution under 'No Admission' category."

and it was further thus, observed by the respondent vide the impugned order to the effect:-

“12. In view of the above, the compliance submitted by the institute was considered as per rules. In view of the record and

*the deficiency **identification of faculty even the Principal and provision of facilities etc.** as above pointed out by the Standing Appellate Committee (SAC) Chaired by a Former Justice (Retd.) in accordance with the Rule 13.7 of Appendix 13 of APHB 2019-2020 and in compliance with the judgment of the Hon'ble Supreme Court in the case of MAA Vaishno Devi as reported in (2013) 2 SCC 617 at para 54 and Parshwanath case reported in (2013) 3 SCC 385 para 28 which explicitly states “**compliance with the conditions for approval as well as Regulations and provisions of the AICTE Act is an unexceptionable condition**”, which aim to ensure for attaining and maintaining of competitive, recognized global standards in Technical Education. It is undeniably essential to ensure strict adherence to the prescribed parameters for imparting of such educational courses including the requisite infrastructure, which is ultimately aimed at protecting, the vital interests of our students.”*

26. In the circumstances, the deficiencies that had been pointed out by the SAC, despite the factum that all the said deficiencies had not been pointed out in the show cause notice dated 27.06.2018 issued to the petitioner on the basis of the complaint of the Haryana State Board of Technical Education (HSBTE), Panchkula to the effect that it had been observed by the Haryana State Board of Technical Education (HSBTE), Panchkula that the building shown for the proposed L.R. College of Pharmacy was the same as that of Sehrawat College of Pharmacy approved by the AICTE and affiliation to HSBTE, nevertheless, in view of the deficiencies that had been pointed out by the SAC which relate to the deficiency of identification of faculty even of the Principal and provision of facilities as detailed by the SAC in terms of Rule 13.17 of Appendix-13 of APH of 2019-20 and the verdict of the Hon'ble Supreme Court in “**Maa Vaishno Devi Mahila Mahavidyalaya Vs.**

State of U.P. and Ors.” (2013) 2 SCC 617, wherein vide paragraph 54, it has been observed to the effect:-

“54. The non obstante language of Section 16 requires the affiliating body to grant affiliation only after recognition or permission has been granted by NCTE. The provisions of Section 16 give complete supremacy to the expert body/NCTE in relation to grant of recognition. In fact, it renders the role of other bodies consequential upon grant and/or refusal of recognition. When NCTE is called upon to consider an application for grant of recognition, it has to consider all the aspects in terms of Section 14(3)(a) of the NCTE Act. The amplitude of this provision is very wide and hardly leaves any matter relatable to an educational institution outside its ambit. To put it simply, NCTE is a supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. NCTE is the paramount body for granting the approval/recognition not only for commencing of fresh courses but even for increase in intake, etc. The Council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses, including the infrastructure. The provisions and scheme of the NCTE Act are in pari materia with that of the Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987, etc.”,

the principles laid down therein being wholly applicable in the instant case and the verdict of the Hon’ble Supreme Court in *“Parshavanath Charitable Trust and Ors. Vs. All India Council for Tech. Edu and Ors.” (2013) 3 SCC 385, wherein vide paragraph 28, it has been observed to the effect:-*

“28. We have already noticed that the compliance with the conditions for approval as well as regulations and provisions of the AICTE Act is an unexceptionable condition. Clause 9.22 of the Handbook of Approval Process issued by AICTE provides a complete procedure for change of

location, station and the same is permissible subject to compliance with the procedure. It contemplates obtaining of “no-objection certificate” from the State Government or UT Administration and affiliating body concerned. The same clause also requires submission of the land documents in original and clearly provides that the same may be a registered sale deed, irrevocable government lease for a minimum period of 30 years, etc. by the authority concerned of the Government. Further, it provides that site plan, building plan for new site should be prepared by a registered architect and should be approved by the competent plan sanctioning authority designated by the State.”

as also the time line laid down by the Hon’ble Supreme Court vide paragraph 38 in **“Parshavanath Charitable Trust and Ors. Vs. All India Council for Tech. Edu and Ors.”** (supra), which reads 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</i>	

	<i>(iv) Bureaus MPCD, BOS and RA 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>

with it having been directed vide paragraph 39 of the said verdict that the said schedule has statutory backing and its adherence is mandatory and not

directory and the law laid down by the Hon'ble Division Bench of this Court in LPA No.540/2015 vide paragraph 5 thereof, which reads 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.”,

it is apparent that the prayer made by the petitioner seeking directions to the respondent for grant of approval for the “Diploma in Pharmacy” and “Bachelor of Pharmacy” courses with an intake of 60 and 100 seats respectively for the academic session 2019-20 and permission to admit students to start the said courses for the said academic session, cannot be granted.

27. The petition and the accompanying application are thus, declined.

ANU MALHOTRA, J

AUGUST 09, 2019/NC