

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

WRIT PETITION NO. 4919 OF 2020

Sayali Charitable Trust's
College of Pharmacy .. Petitioner

Versus

The Pharmacy Council of India .. Respondent

Shri V. D. Hon, Senior Counsel, i/by Shri A. V. Hon, Advocate for
the Petitioner.

Shri Zoheb Hossain, Special Counsel along with Shri S. B.
Deshpande, Standing Counsel for the Respondent.

**WITH
WRIT PETITION NO. 4906 OF 2020**

Nagaon Education Society's Gangamai
Institute of Pharmacy, Nagaon .. Petitioner

Versus

The Pharmacy Council of India .. Respondent

Shri V. D. Hon, Senior Counsel, i/by Shri A. V. Hon, Advocate for
the Petitioner.

Shri Zoheb Hossain, Special Counsel along with Shri S. B.
Deshpande, Standing Counsel for the Respondent.

**WITH
WRIT PETITION NO. 4908 OF 2020**

Shiva Trust Pratibhatai Pawar
College of Pharmacy .. Petitioner

Versus

The Pharmacy Council of India .. Respondent

Shri V. D. Hon, Senior Counsel, i/by Shri A. V. Hon, Advocate for the Petitioner.

Shri Zoheb Hossain, Special Counsel along with Shri S. B. Deshpande, Standing Counsel for the Respondent.

**WITH
WRIT PETITION NO. 4909 OF 2020**

Shiva Trust's Rajeshbhaiyya Tope
College of Pharmacy .. Petitioner

Versus

The Pharmacy Council of India .. Respondent

Shri V. D. Hon, Senior Counsel, i/by Shri A. V. Hon, Advocate for the Petitioner.

Shri Zoheb Hossain, Special Counsel along with Shri S. B. Deshpande, Standing Counsel for the Respondent.

**WITH
WRIT PETITION NO. 5183 OF 2020**

The Shirpur Education Society's R.
C. Patel Institute of Pharmacy .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri D. S. Bagul, Advocate for the Petitioner.

Shri S. K. Tambe, A.G.P. for Respondent Nos. 1 and 2.

Shri Zoheb Hossain, Special Counsel along with Shri S. B.

Deshpande, Standing Counsel for the Respondent No. 3.

Shri C. A. Jadhav, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

CLOSED FOR ORDER ON : 07.10.2020

ORDER PRONOUNCED ON : 06.11.2020

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

. All these matters involve similar set of facts and common question of law. To avoid rigmarole are decided by the common judgment.

2. The petitioners assail the decision of the Executive Committee of the Pharmacy Council of India (for short “P.C.I.”) restricting the intake capacity of the petitioners for their pharmacy colleges to 60 students. The petitioners are running Diploma of pharmacy course.

3. In Writ Petition No. 4919 of 2020, for the first time, the petitioner trust was granted permission to run D. Pharma course in the year 2006 with intake capacity of 60 students. The All India Council of Technical Education (for short “AICTE”) for the first time sanctioned intake of 120 students to the petitioner college for the academic year 2014-2015. The petitioner in Writ Petition No. 4906 of 2020 was granted permission to start D. Pharma course in the year 2006 with intake capacity of 60 students. The AICTE for the academic year 2013-2014 increased the intake to 120 students. The petitioner in Writ Petition No. 4908 of 2020 commenced the D. Pharma course in the year 2014. The AICTE sanctioned intake of 120 students. In Writ Petition No. 4909 of 2020, the petitioner started D. Pharma course in the year 2014. The AICTE sanctioned intake of 180 students. The petitioner in Writ Petition No. 5183 of 2020 started running D. Pharma course under the permission in the year 2003 with

intake of 60 students. In the year 2012, AICTE sanctioned intake of 120 students. In all these cases, PCI had granted approval for intake of 60 students since the inception of the course.

4. Under the impugned communication the PCI has granted extension of approval of the petitioners with intake of 60 students. The same is subject matter of challenge in the present writ petitions.

5. Mr. Hon, the learned senior advocate and Mr. Bagul, the learned advocate for petitioners submit that, the petitioner institutions have their infrastructural facilities, so also the necessary staff to cater to 120 students. Since 2013-2014, the petitioners are running the diploma course with intake of 120 students. They possess the necessary and required infrastructure as per the regulations. It would be unjust to reduce the intake capacity to 60 students. The entire infrastructure would go waste.

6. It is further submitted by the learned advocates for petitioners that, the PCI has not found any deficiency either with the infrastructure or the staff for catering to 120 students. It could not have arbitrarily and abruptly reduced the intake capacity to 60 students. The Apex Court in a case of **The Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trust's Vidarbha Institute of Pharmacy and others, etc.** dated 05.03.2020 in Transferred Case Petition (Civil) Nos. 87-101 of

2014 observed that, the decision shall not affect the students admitted in the increased intake capacity. The PCI is directed to give consequential benefits of registration to such students. All the pending applications for increase in intake capacity and/or for recognition of approval of course/institutions in the pharmacy shall be as per the provisions of the Pharmacy Act, 1948 and the regulations. The Apex Court has further directed that, the concerned institutions who increased their intake capacity as approved by the AICTE and not approved by PCI, shall apply afresh for increase in intake capacity and/or evening shift for the next academic year within a period of four weeks and the same shall be considered by the PCI in accordance with the Pharmacy Act, 1948 and rules and regulations framed therein and the norms prescribed by the PCI. It is submitted that, the PCI has passed the impugned order in defiance of the order of the Apex Court.

7. The learned advocates further submit that, Section 10 of the Pharmacy Act gives power to the PCI to frame regulations. The Pharmacy Act does not prescribe for the intake of students. The same is regulated through the regulations framed U/Sec. 10 of the Act. The PCI has framed the regulations in the year 1991. The regulations of 1991 are holding the field. The petitioners rely upon Appendix B of the regulations of 1991, laying down the requirement of the staff, equipment, laboratory and other aspects for intake of 60 students and 120 students. The regulation has taken into consideration the intake of 120 students also. The Apex Court in the judgment referred to supra has directed the

PCI to take decision considering the regulations. The reliance on circular dated 12.12.1989 by respondent to suggest that PCI will not allow admission to diploma course above intake of 60 students is contrary to the Regulations 1991. The regulations of 1991 framed U/Sec. 10 of the PCI Act prescribe intake of 60 as well as 120 students for pharmacy diploma course. The regulations are of the year 1991, as such the circular of 1989 would not have force and is against the regulations. The petitioners are maintaining standards of education. The learned counsel rely on the judgment of the Delhi High Court in a case of Krupanidhi Education Trust (Reg.) and another Vs. The Secretary, Pharmacy Council of India and others reported in *1991 (Supp.) DRJ 137* to contend that, the PCI cannot act on the policy decision communicated by letter dated 12th December, 1989. The same was quashed by the Delhi High Court and Delhi High Court permitted increase in the intake capacity beyond 60 students.

8. It is further contention of the learned advocate for petitioners that, the PCI is acting arbitrarily. The PCI has given permission to some institutions to run pharmacy diploma course with intake capacity of more than 60 students. Illustration is sought to be given of Kamla Nehru Polytechnic (Pharmacy) Aurangabad to contend that in the year 2002 the intake capacity was increased to 120. According to the learned counsel, the respondent ought to have considered the information furnished by the petitioners and the sufficiency of the staff, laboratory and all other aspects for catering to 120 students.

9. Mr. Deshpande and Mr. Zoheb Hossain, the learned advocates representing PCI canvassed following propositions.

i) The Central Council of the PCI comprises of experts in the field of pharmacy, pharmaceutical chemistry, pharmacology elected by the University Grants Commission (UGC) and representatives of the Director General Health Services, Drugs Controller India, UGC, AICTE and one member to represent each of the State Councils as well as one member from each of the State Governments. The Central council in its wisdom has considered the application of the market forces, the distribution of colleges across the nation, the requirement of Pharmacy workforce, the availability of qualified teaching faculties, pharmacists, the population ratio and has taken a policy decision of not granting permission for Diploma in Pharmacy course with intake capacity beyond 60 students. The mushroom growth of institutions cannot be permitted. The academic experts have taken the decision. The said decision is not unreasonable or arbitrary, as such does not warrant interference of this Court. The learned counsel rely on the judgment of the Apex Court in the case of *U. G. C. Vs. Neha Anil Bobde* reported in (2013) 10 SCC 519 and in a case of *Jawahrlal Nehru Technological University Vs. Sangam Laxibai Vidyapeet* reported in *2018 SCC Online SC 2277*.

ii) It is further contended that, considering all these factors, the PCI has taken a policy decision to declare a moratorium of five years for opening of new pharmacy institutes in the country under its decision dated 17.07.2019.

iii) The petitioner institutions were never granted permission for intake of 120 students. They were never granted permission of intake beyond 60 students. It is not therefore correct on the part of the petitioners to contend that there is reduction of intake capacity.

iv) The example given by the petitioners of Kamla Nehru Polytechnic (Pharmacy) Aurangabad is totally erroneous. That college was granted intake of 120 students as per resolution passed in the 47th meeting held on 07th April, 1988. After 1989 the PCI has not granted permission to any institute with intake beyond 60 students. The policy of the PCI to restrict the intake capacity of 60 students is reiterated time and again in its circulars dated 08.11.2002, 13.03.2003, 11.06.2003, 26.05.2004, 11.06.2013 and 25.06.2013. The Education Regulation 1991 nowhere mandates that intake capacity should be of 120 students. The Education Regulation 1991 refers to infrastructure for 120 students, because prior to 1989 permissions were granted to D. Pharmacy course with intake of 120 students. The permission given to them cannot be recalled, as such, provision is also made for required infrastructure, if there are 120 students.

v) The learned counsel further submit that, the judgment of the Delhi High Court in a case of Krupanidhi Education Trust Vs. Secretary PCI reported in *AIR 1992 Delhi 238* would not apply in the present cases, as the same is factually distinguishable. In that

case the institution had applied for increase in intake capacity in pursuance to which even an inspection was conducted and deficiency was pointed out for increasing staff by three members for which institute had even complied. It is in those circumstances, the policy decision of PCI was held to be arbitrary. The Orissa High Court in a case of **Nirmal Kishor Sahoo and others Vs. State of Orissa and others** in O. J. C No. 1417 of 2002 under its judgment dated 28.08.2002 was pleased to distinguish the judgment of the Delhi High Court in the case of Krupanidhi Education Trust Vs. Secretary PCI (supra). The Orissa High Court was convinced that, the decision of PCI to restrict the intake capacity to 60 students was not arbitrary. It is within the powers of PCI to formulate a policy and restrict the intake capacity of a particular institution.

vi) Mr. Deshpande, the learned advocate further submits that, in the present cases, the *doctrine of desuetude* would apply. Even if it is presumed that regulation provides for intake of 120 students, the same was never followed. On the contrary the PCI after its policy decision in the year 1989 never granted permission for D. Pharma course with an intake beyond 60 students. The reliance is placed on the judgment of the Apex Court in the case of Municipal Corporation of City of Pune Vs. Bharat Forge Co. Ltd. and others reported in (1995) 3 SCC 434a.

vii) The learned counsel have also placed on record the statistics to contend that the ratio of pharmacists to population is as per the guidelines of World Health Organization (WHO). The

Apex Court in a case of **Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others** in Transfer Petitions (Civil Nos. 87-101 of 2014) under judgment dated 05.03.2020 was pleased to conclusively decide that Pharmacy Act, 1948 will prevail over any other law in so far as standards of pharmacy education and regulation of provisions of profession of pharmacy is concerned. The norms and regulations set by the PCI including the norms and regulations with respect to increase and/or decrease in intake capacity of students as specified under Pharmacy Council Act will have to be followed.

10. We have considered the submissions canvassed by the learned advocates for the respective parties.

11. The Apex Court in a case of **Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others** (supra) has conclusively held as under :

“21. In view of the above and for the reasons stated above, it is held that in the field of Pharmacy Education and more particularly so far as the recognition of degrees and diplomas of Pharmacy Education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by the concerned institutions imparting education for degrees and diplomas in Pharmacy, including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of the PCI shall only be followed by the institutions imparting degrees and diplomas in Pharmacy. The questions are answered accordingly.”

12. Those institutions who had increased their intake capacity as approved by the AICTE, though not approved by the PCI were directed to apply afresh to the PCI in accordance with Pharmacy Act, Rules and Regulations framed thereunder and norms prescribed by the PCI.

13. It appears from the record that, the petitioner institutions at no material point of time were granted permissions by the PCI to run the D. Pharma course with an intake of students beyond 60. It was the AICTE that had granted the petitioner institutions the permission to admit 120/180 students as the case may be.

14. It also appears that, initially on or about 12th December, 1989, the policy decision was taken by the Pharmacy Council of India that no request for raising admission beyond the intake of 60 students will be entertained and the said policy is consistently adhered to by the PCI by subsequent circulars dated 08.11.2002, 13.03.2003, 11.06.2003, 26.05.2004, 11.06.2013 and 25.06.2013. The PCI, it appears that, has followed the policy of not granting intake capacity of more than 60 students since 1989 consistently throughout the country. The petitioners are not in a position to place on record any illustration that the PCI has granted permission to an institution to run D. Pharma course beyond 60 students after 1989. The one illustration of Kamala Neharu College at Aurangabad relied by the petitioners is replied by the respondent by saying that the said institute is granted permission to admit 120 students on 07th April, 1988 and the

copy of the same is placed on record.

15. The policy decision in academic matters is the domain of the experts in the field of academics. The Apex Court in a case of Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth reported in *(1984) 4 SCC 27* has observed thus :

“The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possession technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded.”

16. The Central Council of the PCI comprising of experts in the field of pharmacy, pharmaceutical chemistry, pharmacology elected by the UGC and representatives of the Director General Health Services, Drugs Controller India, UGC, AICTE and one member to represent each of the State Councils as well as one member from each of the State Governments has taken a policy decision. As contended in the affidavit and also submitted during the course of arguments that the said policy decision has been taken considering the market forces, the distribution of

colleges across the nation, the requirement of Pharmacy workforce, the availability of qualified teaching faculties, pharmacists, the population ratio. The policy decision is also taken to grant moratorium of five years for opening new pharmacy institutes in the country under its decision dated 19.07.2019. The data is placed on record by respondent of state wise distribution of doctors and pharmacists vis-a-vis the Indian Population. The same is reproduced as under.

Sr. No.	State	Population in Lakhs	No. of Doctors registered (2017)	Doctor per 1000 population	No. of pharmacist registered (2017)	Pharmacist per 1000 population	No. of pharmacist per doctor
1	Andhra Pradesh	894	86129	0.96	115754	1.3	1.34
2	Arunachal pradesh	16.01	840	0.525	279	0.17	0.332
3	Assam	344.9	22532	0.65	3668	0.10	0.162
4	Bihar	1089.2	40043	0.36	4163	0.04	0.1039
5	Chattisgarh	288	6915	0.24	9713	0.33	1.40
6	Delhi	186	16176	0.87	32075	1.72	1.98
7	Goa	15.09	3367	2.24	566	0.37	0.154
8	Gujrat	671	53954	0.80	119445	1.78	2.213
9	Haryana	279.6	5717	0.20	31663	1.13	5.53
10	Himachal Pradesh	76.28	2849	0.38	3852	0.50	1.35
11	J & K	142	14326	1.00			
12	Jharkhand	377	5093	0.135	2337	0.061	0.45
13	Karnataka	671.5	104794	1.56	52162	0.77	0.497
14	Madhya Pradesh	788.1	34347	0.435	NA		
15	Maharashtra	1206.8	153513	1.27	203089	1.68	1.32
16	MCI		52666				

17	Nagaland	31.2	801	0.25	1553	0.73	1.938
18	Odisha	453.4	21681	0.48	17665	0.39	0.814
19	Punjab	299.2	44682	1.5	44616	1.49	0.998
20	Rajasthan	748.8	40559	0.54	38156	0.51	0.94
21	Sikkim	6.43	893	1.48	NA		
22	Tamil Nadu	797.8	126399	1.58	58466	0.73	0.46
23	Kerala	369.6	55251	1.50	35382	0.95	0.64
24	Uttar Pradesh	2192.4	71480	0.33	30276	0.14	0.42
25	Uttarakhand	103.2	7060	0.68	2643	0.25	0.375
26	West Bengal	954	66974	0.70	89630	0.93	1.33
27	Telengana	391.2	2354	0.06	NA		
28	Meghalaya	34.7			1370	0.40	
29	Mizoram	15.1			1313	0.87	
30	Tripura	44.2			4747	1.07	
31	Daman & Diu	3			52	0.17	
32	Puducherry	7.45			2493	3.34	

(Data source list of doctors registered with State MCI's and list of pharmacists registered with State PCI's page 217 and 225 from National Health Profile 2018 published by MOH&FW, GoI. States where no data is provided in the report have been left blank for uniformity)

17. It appears that, number of pharmacists per doctor and per population is as per the standards prescribed. One of the aspect considered by the respondent regulating the number of seats was to curb the concentration of such institutes in one geographical area so that equitable distribution of pharmacist manpower could be achieved. The diploma pharmacists do not have any other source of employment or self employment except engaging in dispensing of medicines either in hospitals or chemist shops. It

is brought on record by the respondent that the pharmacists workforce registered with various state councils currently stands at 1.5 million. The current approved output per year is at approximate 1,80,000 D. pharma and approximate 2 lakhs B. Pharmas from the already approved institutions. The generation of excessive workforce would lead to unemployment of qualified workforce. As such the decision has been consciously taken by the Central Council.

18. This Court would not sit in appeal over the policy decision of the expert bodies in academic matters. Recommendation of experts or policy decision of expert bodies would be beyond the pale of judicial review unless it is shown that the policy is arbitrary or is so unreasonable that no person of ordinary and reasonable prudence would subscribe to it. The courts will observe judicial restraint in policy decision of expert bodies and interfere only when it finds the decision arbitrary.

19. The policy is applied uniformly to all the institutions conducting D. Pharma course. The reliance placed on the educational regulations 1991 would not inure to the benefit of the petitioners. Prior to 1989 permissions are granted to the institutes to admit more than 60 students and for that provision has been made of the required infrastructure if intake capacity is 120 students. In future also if considering attending circumstances, the PCI takes a policy decision to increase the intake capacity of the colleges, then the said regulations would be handy, but the same would not mean that PCI must grant

approval for intake of 120 students or that institutions have vested right to claim intake of 120 students.

20. As observed above, since registration of petitioner institutions, the PCI had never granted approval beyond 60 students. The petitioners cannot claim vested right to such extension of approval beyond 60 students. In the interregnum, AICTE had granted permission for 120/180 students. It has been finally held by the Apex Court in the case of **Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others** (supra) that, PCI is the only authority to finalize the intake capacity of the institutions. The PCI continued the intake capacity of the petitioner institutions to 60 students as is sanctioned by the PCI since inception and till date. The PCI did not reduce, nor enhanced the intake capacity of the petitioner institutions at any point of time.

21. In light of the above, no relief can be granted to the petitioners. The writ petitions are dismissed. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/Nov. 20