

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.5450 of 2020
and
W.M.P.Nos.6375 & 6376 of 2020

Sree Bhavani College of Pharmacy,
Represented by its Correspondent,
J. Narayanan

... Petitioner

Vs.

1. The Union of India,
Rep.by its Joint Secretary,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi - 110 001.
2. The Chairman,
All India Council for Technical Education (AICTE)
Nelson Mandela Marg,
Vasant Kunj,
New Delhi - 110 070.
3. Pharmacy Council of India,
Combined Council's Building,
Kotla Road,
Ajwan-E-Ghalib Marg,
New Delhi - 110 002.
4. The State of Tamil Nadu,
Rep.by the Secretary to Government,
Health Department,
Secretariat, Fort St. George,
Chennai - 600 009.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari, calling for the records of the second respondent comprising of the approval process handbook 2020-2021, and quash the same as being arbitrary, illegal and unconstitutional insofar as the inclusion of B.Pharm courses in Clause 2.12.1 of the approval process handbook, 2020-2021 is concerned.

For Petitioner : Mr. N.R. Chandran, Senior Counsel
for Mr. R. Kannan

For Respondents : Mr. B. Rabu Manohar, for R1 & R2
Senior Central Government Counsel
Mr. E. Balamurugan, for R3
Special Government Pleader
Mr. E. Manoharan, for R4
Special Government Pleader

O R D E R

This writ petition has been filed challenging the order passed by the second respondent comprising of the approval process handbook 2020-2021.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The issue that has been raised in the present writ petition is now covered by the judgment of the Hon'ble Supreme Court in Transferred Case (Civil) Nos....of 2020 [Transfer Petitions (Civil) Nos.87-101 of 2014] dated 05.03.2020. The relevant portion in the judgment is extracted hereunder:-

"16. Now the next question which is required to be considered is whether in the field of pharmacy, PCI would have the jurisdiction or AICTE constituted under the AICTE Act which is held to be a general law. The Constitution and Composition of Central Council under the Pharmacy Council of India is as under:

"3. Constitution and composition of Central Council.-The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely:-

(a) Six members, among whom there shall be at least one teacher of each of the subjects, pharmaceutical chemistry, pharmacy, pharmacology and pharmacognosy elected by the University Grants Commission from among persons on the teaching staff of an Indian University or college affiliated thereto which grants a degree or diploma in pharmacy;

(b) Six members, of whom at least four shall be persons possessing a degree or diploma in, and practicing pharmacy or pharmaceutical chemistry nominated by the Central Government;

(c) One member elected from amongst themselves by the members of the Medical Council of India.

(d) the Director General, Health Services, ex officio or if he is unable to attend any Meeting, a person authorized by him in writing to do so;

The Drugs Controller, India, ex officio or if he is unable to attend any meeting, a person authorized by him in writing to do so;

(e) the Director of the Central Drugs Laboratory, ex officio;

(f) a representative of the University Grants Commission and a representative of the all India Council for Technical Education;

(g) one member to represent each State elected from amongst themselves by the members of each State Council, who shall be a registered pharmacist;

(h) One member to represent each State nominated by the State Government, who shall be a registered pharmacist:"

Therefore, PCI consists of experts in the field of pharmacy and related subjects connected with the education of pharmacy. Therefore, under the statute, specialized persons in the field of pharmaceutical, pharmacy etc. shall be the members of the PCI.

16.1 On the other hand, so far as AICTE is concerned, only one member would be from the field of pharmacy and that too representative of PCI. Under the circumstances, the PCI is the body of experts connected with the subject of pharmacy and related subjects and therefore it will be in the larger interest and more particularly in the interest of education of pharmacy that PCI shall alone have the jurisdiction in the field of pharmacy, rather than AICTE.

17. The aforesaid question is also required to be viewed from another angle. Both, the PCI and AICTE are the creature of the statute. Therefore, it is not at all healthy that the two regulators, both being Central authorities, can be permitted to fight for supremacy. The fight of supremacy between both the regulators is unhealthy for the education sector as well as the institutions to permit two regulators to function in the same field. Therefore also and more particularly when the PCI is consisting of the experts in the field of pharmacy and other related subjects, it is in the larger interest in the field

of pharmacy that the PCI must be given the power to regulate in the field of pharmacy.

17.1 An identical question came to be considered by this Court in the case of Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra). In that case, this Court was considering the similar provisions in the field of architecture and whether the mandate of the Council of Architecture or that of AICTE would prevail on the question of granting approval and related matters to the institution for conducting architecture education course, if there is contradiction in the opinions of these two bodies. At this stage, it is required to be noted that in the definition of 'technical education' in Section 2(g), 'architecture' is also included like 'pharmacy'. In that case also, the Architecture Act was enacted prior to the AICTE Act, 1987, i.e. in the year 1972. After considering the scheme of the Architecture Act and the powers and function of the Council of Architecture, this Court observed and held that the Architecture Act is a Special Act and shall prevail over the AICTE Act being a general Act, in case of conflict/contradictions in the opinions of the aforesaid two bodies.

After considering the similar submission made on behalf of AICTE in the case of Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra), it is ultimately observed and held in paragraphs 63 and 64 as under:

"63. We are of the opinion that in respect of the provisions of Section 2(g) of the 1987 Act, the definition of "technical education" would have to be given such a construction and the word "architecture" should be treated to have been inapplicable in cases where the AICTE imports its regulatory framework for institutions undertaking technical education. There would however be no substitution because the context would not demand it. This construction of the definition clause is necessary as the external context requires it to prevent an unworkable outcome in implementation of the 1987 Act. The principle of implied repeal cannot apply so far as the provisions relating to architecture education is concerned, on the basis of the 1987 Act having become

operational. One of the dominant purposes of the 1972 Act is recognition of qualifications on architecture. The registration of an architect is dependent upon acquisition of such recognised qualification. The said Act cannot be held to have been repealed by implication for the sole reason of inclusion of the word "architecture" in the definition of technical education. AICTE has failed to discharge its onus to establish the 71 said provisions of the 1972 Act was repealed by implication.

64. We accordingly hold that so far as recognition of degrees and diplomas of architecture education is concerned, the 1972 Act shall prevail. AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in the subject of architecture. Norms and Regulations set by CoA and other specified authorities under the 1972 Act would have to be followed by an institution imparting education for degrees and diplomas in architecture.

18. We are in complete agreement with the view taken by this Court in Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra). Otherwise on merits also, as observed and held herein above, the Pharmacy Act which is a Special Act in the field of pharmacy shall prevail and consequently so far as the recognition of degrees and diplomas of pharmacy education is concerned, the Pharmacy Act shall prevail. As observed herein above, PCI constituted under the provisions of the Pharmacy Act which is consisting of the experts in the field of pharmacy and/or related subjects shall prevail. Consequently, the norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by an institution imparting education for degrees and diplomas in pharmacy.

19. Now, so far as reliance placed upon Article 372 of the Constitution by learned Advocate appearing on behalf of AICTE is concerned, at the outset, it is required to be noted that even as per Article 372 of the Constitution, unless a pre-constitutional statute is specifically repealed it continues to remain in operation. In the present case, even in the AICTE Act there is no specific repeal of the Pharmacy Act, 1948.

As observed herein above, there is not even 'implied repeal'. Therefore, reliance place upon Article 372 of the Constitution is misconceived.

20. At this stage, it is required to be noted that having realized the difficulties in view of dual regulations of pharmacy education under the PCI and AICTE, a ministerial level meeting between the Minister of Health and Family Welfare and the Minister of HRD, Union of India was held on 03.10.2018 to end the dual regulations on pharmacy education under PCI and AICTE. In the counter-affidavit filed by the AICTE itself, it is stated that during the meeting it was noted and even it is submitted by Ms. Pinki Anand, learned ASG appearing on behalf of the Union of India that during the meeting it was noted that, both the Pharmacy Act, 1948 and the AICTE Act, 1987, contain the provisions regarding pharmacy education leading to duplication of regulations and considerable confusion at the field level, it was unanimously agreed that this dual regulation should be ended forthwith and the AICTE Act governing the general technical education would be amended deleting 'pharmacy' from its mandate and the pharmacy education would thereafter be governed by the Pharmacy Act, 1948. It is submitted that the amendment in Section 2(g) of the AICTE Act was proposed, but thereafter there is no further progress in the wake of formation of newly proposed Higher Education Council of India and finalization of NEP, which as such has nothing to do with the Pharmacy Act. Therefore, even according to the Union of India, the word 'pharmacy' is to be deleted from the definition of 'technical education' contained in Section 2(g) of the AICTE Act.

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.

4. It is clear from the above judgment that in the field of Pharmacy Education, it is only the Pharmacy Act which will prevail and the Pharmacy Council of India will be the ultimate authority to decide upon the approval for the institution. The AICTE does not have any role to play. This position has been made clear in the above judgment.

5. In view of the above, the respondents does not have the power or jurisdiction to include the B.Pharm Course in the Process Handbook for the year 2020-2021. Accordingly, Clause 2.12.1 in the Process Handbook is declared to be non-est in view of the above judgment of the Hon'ble Supreme Court.

6. This writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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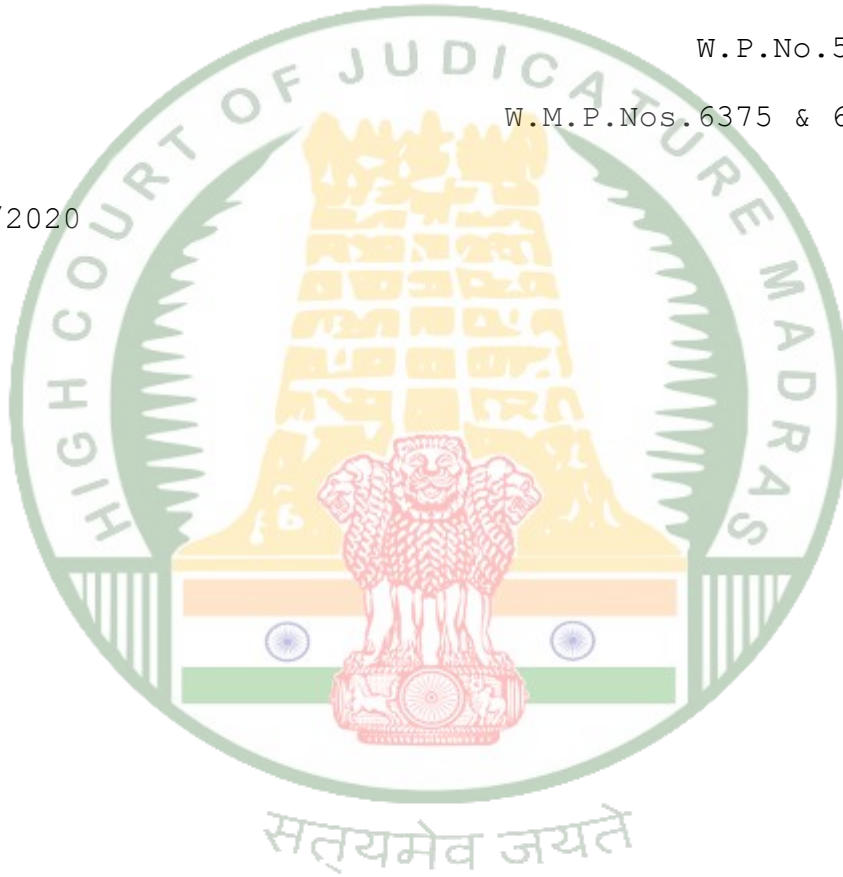
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+2ccs to Mr.B.Rabu Manohar, Advocate, S.R.No.22418
+1cc to Mr.R.Kannan, Advocate, S.R.No.22612

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PP(CO)
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