

D IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2020

PRONOUNCED ON : 01.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.10104 of 2020
and W.M.P.Nos.12286 & 12284 of 2020

Pavai Varam Educational Trust
Established and Administering
Paavai College of Pharmacy and Research
No. 64-C, Rotary Nagar
Namakkal Road, Rasipuram - 637 408
Namakkal District
Rep. By Chairman Mr.V. Natarajan. Petitioner

-Vs-

The Pharmacy Council of India
Represented by the Secretary cum Registrar
Combined Council Building
Temple lane, Kotla Road
Aiwan-E-GHALIE Marg
Post Box No. 7020 New Delhi - 110 002. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus writ calling for the records relating to the impugned order in Annexure B of the 109 Central Council of the respondent Pharmacy Council of India dated 08/09.04.2020 in so far as not granting permission to start Pharm.D Course and consequential impugned order of the Executive Committee of the respondent Pharmacy Council of India vide its impugned Decision of 2.326 held on 27.04.2020(31" Online) on the appeal filed by the petitioner, quash the same and direct the Respondent Pharmacy Council of India to grant approval for starting Pharm.D Degree Course for the academic year 2020-21 with an intake of 30 student

For Petitioner : Mr.D.Prabhu Mukunth Arun Kumar

For Respondent : Mr.M.T.Arunan

O R D E R

The present writ petition has been filed challenging the order passed by the Executive Committee of the Pharmacy Council of India dated 27.04.2020 on the appeal filed by the petitioner College against the impugned order passed by the Central Council of the Pharmacy Council of India dated 09.04.2020.

2. The petitioner Trust is running a college named as Paavai College of Pharmacy and Research. This institution was started in the year 2016 and permission was sought for to start four years B.Pharm degree course. The permission was granted by the Government of Tamil Nadu through Government Order dated 31.12.2015. The Pharmacy Council of India also granted approval under Section 12 of the Pharmacy Act 1948 for an annual intake of 60 students and the approval is extended every year till date. The intake was later increased to 100 students from the academic year 2020-21. Thus, the petitioner is running the college for the last four years.

3. The petitioner wanted to start Pharm.D course (Doctor of Pharmacy), which is an integrated course for six years (five years of Study and one year of Internship-Residency). This is a full time course. The petitioner wanted to start this course and accordingly submitted all the required documents along with necessary fees and sought for approval from the Pharmacy Council of India to start this course.

4. The Central Council of the Pharmacy Council of India rejected the request made by the petitioner and did not grant approval for starting the Pharm.D Course on the ground that the B.Pharm course was not approved under Section 12 of the Pharmacy Act 1948 (hereinafter called as 'the Act'), at the time of submission of application for Pharm.D Course. The petitioner College filed an appeal and this was considered by the Executive Committee of the Pharmacy Council of India and it was rejected on 27.04.2020 on the very same ground. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Learned counsel for the petitioner submitted that the impugned orders are on the face of it illegal since the ground on which the approval has been rejected is contrary to the prevailing facts. The learned counsel in order to substantiate the submission, brought to the notice of this Court the approval that is extended every year and submitted that this approval for the B-Pharm course was granted only under Section 12 of the Act. Learned counsel therefore submitted that the impugned orders suffer from non-application of mind. The learned counsel further submitted that the college has been running till date in

compliance with the requirements of the Act and the Regulations and it has all the facilities both in terms of infrastructure as well as in terms of faculty, to conduct the Pharm.D course. Therefore, the impugned decision taken by the respondent is liable to be interfered by this Court and the respondent must be directed to grant approval to start Pharm.D Course from the academic year 2020-21.

6. The respondent has filed a counter affidavit and the relevant portions in the counter affidavit is extracted hereunder.

"(10) The institutions in order to get approval u/s 12 of the Pharmacy Act for B Pharm Course, the First batch of student must pass out from the said college i.e after completing full tenure of the four years in the said college only then the institution will be granted approval u/s 12 of the Pharmacy act for B Pharm Course. PCI will first grant approval for conduct for first year, second year, third year, fourth year of the four years B. Pharm course before considering final approval us 12 of the Pharmacy Act after PCI is satisfied that all the infrastructure required as per Pharmacy Act and Regulations made thereunder are present

a) That as per the Regulation 6 of the Pharm.D Regulations only institute running B Pharm Course approved under section 12 of the Pharmacy Act will be permitted to run Pharm.D programme. Regulation 6 of the Pharm.D Regulations, 2008 is quoted.

"Institutions running B.Pharm programme approved under section 12 of the Pharmacy Act, will only be permitted to run Pharm.D. programme. Pharm.D. (Post Baccalaureate) programme will be permitted only in those institutions which are permitted to run Pharm D. programme."

b) That is respectfully submitted that in the present case the Petitioner had approval for conduct for BPharm at the time submission of application for starting Pharm D Course. The Petitioner finally got approval s 12 of

the Pharmacy Act in the month of April by the 109 CC of the answering respondent PCI and since as per Regulation of the Pharm D Regulations 2008 only B Pharm approved us 12 of the Pharmacy Act can start Pharm D Course, the Pensioner application was rightly rejected by the answering respondent PCI in view of the Regulation."

7. Learned counsel appearing on behalf of the respondent submitted that the request made by an Institution to start a Pharm.D course will be considered only when the B.Pharm course is approved under Section 12 of the Act read with Regulation 6 of the Pharm-D Regulations 2008. The learned counsel submitted that the petitioner institution applied for the introduction of Pharm-D course for the academic year 2020-21. When this application was considered, it was found that the petitioner does not have approval under Section 12 of the Act for the preparation of registration as a Pharmacist for the B.Pharm course, which is a mandatory requirement for starting the Pharm.D Course. The petitioner Institution will satisfy this requirement only during the academic year 2020-21 and therefore the respondent was right in rejecting the claim made by the petitioner Institution.

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials placed on record.

9. Before this Court ventures to decide the issue involved in this writ petition, it will be appropriate to extract Section 12 of the Act and Regulation 6 of Pharm.D Regulations, 2008.

"Section 12. Approved course of Study and Examinations: (1) (1) Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists. (2) Any authority in a State 24 which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved

examination for the purpose of qualifying for registration as a pharmacist under this Act. "

Regulation 6 of the Pharm.D Regulations, 2008
Institutions running B.Pharm program approved under Section 12 of the Pharmacy Act, will only be permitted to run Pharm.D programme. Pharm.D (Post Baccalaureate) programme will be permitted only in those institutions which are permitted to run Pharm.D. Programme."

10. Section 12 of the Act deals with approval for the Course of Study and Examinations. Subsection (1) deals with the Course of Study and Subsection (2) deals with the Examinations. In the present case, Subsection (1) will be more relevant. It merely states that any authority who conducts a Course of Study for Pharmacists will apply to the Central Council for the approval of the course and the Central Council, before granting the approval, will satisfy itself as to whether the course of study is in conformity with the Regulations. In the present case, when the approval is given for the B.Pharm course, it is seen that each approval is granted to the petitioner Institution only under Section 12 of the Act.

11. Insofar as the Regulations are concerned, the Regulation that is referred supra makes it clear that Pharm.D programme will be permitted only in Institutions running B.Pharm programme approved under Section 12 of the Act. Therefore, it is clear from the Regulations that to start a Pharm.D programme, it is a pre-requisite that the Institution must be running a B.Pharm course which is approved under the Act.

12. The petitioner was granted approval for running B.Pharm course from the academic year 2016-17. Every year the approval is extended. The petitioner Institution has already completed four years, during the academic year 2019-20 and the first batch of students would have secured the B.Pharm Degree during the academic year 2019-20. According to the Pharmacy Council of India, the Pharm.D course is purely a clinically oriented course and it is not a technical course and the same is clear from the Pharm.D Regulations. Since it is a clinically oriented six years course, an Institution is expected to have a considerable infrastructure and that is why the Pharmacy Council of India is granting approval to run this Course only to those Institutions which are already running the B.Pharm Course approved under Section 12 of the Pharmacy Act. These institutions have such infrastructure and also the necessary faculty to teach the Pharm.D course.

13. The only area of controversy in the present case is as to whether the respondent was right in rejecting the permission sought for by the petitioner Institution even though the approval for running the B.Pharm course was granted under Section 12 of the Act. The respondent has taken a very clear stand that approval will be first granted for each year and after the completion of four years of B.Pharm Course, at the time when the first batch of students pass out from the college, the main approval under Section 12 will be granted to the Institution. This is more in the nature of a final approval, wherein the Pharmacy Council of India will satisfy itself with regard to the successful completion of the course by the first batch of students, and also the infrastructure and the availability of faculty members to conduct the course. This final approval is taken to be the minimum requisite to grant the approval for a Pharm.D course.

14. The Pharmacy Council of India considers the approval granted under Section 12 of the Act for the B.Pharm course for a newly started Institution only on the completion of four years when the first batch of students complete the course and leave the college. This final approval was not available to the petitioner Institution at the time of submitting the application to start the Pharm.D course. The petitioner Institution is eligible to get such a final approval only on completion of the academic year 2019-20. This pre-requisite fixed by the Pharmacy Council of India is in line with Section 12 of the Act read with Regulation 6 of the Pharm.D Regulations 2008. Therefore, this Court does not find any illegality on the part of the Pharmacy Council of India rejecting the claim made by the petitioner Institution to start the Pharm.D course. Insofar as a new Institution is concerned, the final approval granted after the completion of four years of B.Pharm course under Section 12 of the Act must be taken to be the approval as contemplated under Regulation 6.

15. In view of the above discussion, this Court does not find any ground to interfere with the impugned decisions taken by the Central Council and the Executive Council of the Pharmacy Council of India. There is however a change in circumstance since the four year period has been completed and the first batch of students have already passed out in the academic year 2019-20. Therefore, the petitioner Institution automatically qualifies under Regulation 6 of the Pharm.D Regulations 2008.

16. The next question is as to whether the respondent can be directed to consider the claim of the petitioner Institution to start the Pharm.D course from the academic year 2020-21. A time schedule has been laid down by the Supreme Court for grant of approval in "Parshavanath Charitable Trust and Others (vs)

AICTE and Others" by a judgment dated 13.12.2012. Under normal circumstances, the last date for granting or refusing approval is 10th April. However, considering the pandemic situation, the Honourable Supreme Court, as a special case, has extended the time for the academic year 2020-21 upto 24.06.2020. This order was passed by the Honourable Supreme Court on 10.06.2020. This time limit has already expired. Therefore, this Court cannot give any direction to the respondent to consider the claim made by the petitioner Institution for the academic year 2020-21.

17. In view of the above, there shall be a direction to the respondent to consider the claim made by the petitioner to run the Pharm.D course at least from the academic year 2021-22. The respondent shall satisfy themselves with regard to the infrastructure facility and the availability of faculty members before granting the approval to the petitioner Institution to run the Pharm.D course from the academic year 2021-22.

18. This Writ Petition is disposed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To
The Secretary cum Registrar
Pharmacy Council of India, Combined Council Building
Temple lane, Kotla Road, Aiwan-E-GHALIE Marg
Post Box No. 7020 New Delhi - 110 002.

W.P.No.10104 of 2020
& WMP Nos.12286 & 12284 /2020

NRL (CO)
RMP (05/11/2020)

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