

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.9.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.874 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, V.Natarajan ..Appellant/Petitioner

Vs.

The Pharmacy Council of India,
rep. 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/ Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 1.9.2020 passed by the learned Single Judge in W.P.No.10104 of 2020.

WP NO.10104 OF 2020: Petition praying to issue a writ of Certiorarized Mandamus calling for the records relating to the impugned order in Annexure 'be and hereby ' of the 109 central council of the respondent pharmacy council of india dated 08.04.2020 and 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 20 student.

For Appellant : Mr.D.PrabhuMukunth Arunkumar

For Respondent

: Mr.M.T.Arunan
Standing Counsel
assisted by
Mr.M.A.Arunesha

JUDGMENT

The Hon'ble Chief Justice

The appellant is running a Pharmacy College duly affiliated to the Pharmacy Council of India and is offering B.Pharm Degree course. The permission was granted to the institution on 31.12.2015 and it therefore started functioning with annual approvals in terms of Section 12 of the Pharmacy Act, 1948 (in short, "the 1948 Act").

2. The appellant institution applied for permitting it to run a Pharm.D course (Doctor of Pharmacy), which is an integrated full time course of six years. The request by the appellant was moved through an application dated 27.12.2019 for the academic year 2020-2021. The institution was newly established and it completed its first batch of final fourth year students, which session concluded in April, 2020.

3. The request of the appellant was turned down by the Pharmacy Council on the ground that on the date when the application was moved, the appellant did not have the approval of the course of B.Pharm.

4. This order came to be challenged before the learned Single Judge, who after having traversed the facts and also the counter-affidavit filed on behalf of the Pharmacy Council, considered the impact of Section 12 of the 1948 Act read with Regulation 6 relating to Pharm.D Regulations, 2008 [for brevity, "the 2008 Regulations"] promulgated with effect from 10.5.2008, to conclude that the approval as referred to in Section 12 of the 1948 Act will mean, the final approval after completion of four years, and that should be taken to be a requisite for extending a recognition for running a Pharm.D course. Paragraphs (13) and (14) of the impugned judgment are extracted herein under:

"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."

5. Learned counsel for the appellant contends that the provisions have been misconstrued and the reasoning given in the rejection order being untenable, the writ petition ought to have been allowed. Learned counsel further submitted that the stand taken in the counter-affidavit cannot supplement the reasons in the impugned order, for which he has relied on the judgment in the case of Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405.

6. It is contended by the learned counsel for the appellant by pointing out the provision of Section 12 of the 1948 Act that the approval already existed and as per Regulation 6 of the 2008 Regulations, all institutions that are running B.Pharm programme approved under Section 12 would be entitled to get recognition for Pharm.D course as well. He submits that there is no impediment or inhibition that can be read into Regulation 6 so

as to limit the consideration for grant of recognition only after completion of first batch of four years of the students to enable the authority to exercise its power for grant of recognition of a new course. He submits that the approval is complete and the recital contained in the approval orders clearly indicate that the students having passed out the examinations that have been approved are qualified for getting registered with the Pharmacy Council. He therefore submits that keeping in view the combined effect of these provisions, there is no impediment, much less legal impediment in granting permission to run the course Pharm.D. He therefore submits that the impugned order passed by the Council as well as the judgment of the learned Single Judge deserve to be set aside and the appeal deserves to be allowed with a direction to the respondent to grant permission for running the Pharm.D course.

7. Countering the said submissions, Shri M.T.Arunan, Standing Counsel, assisted by Mr.M.A.Arunesha, learned counsel, has urged that the approval to the course of studies means the entire course of four years and not just the annual approvals referred to in Section 12 of the 1948 Act, which was well known to the appellant and, therefore, the application of the appellant was premature when it was moved on 27.12.2019. He submits that the Regulations read with Section 12 of the 1948 Act do not create any ambiguity or confusion and rather the claim has been rightly rejected.

8. He further submits that as on date the appellant has already crossed that hurdle, and it is open to it to apply afresh, which can be considered by the Council, for which the formalities of inspection etc. will have be carried out. He therefore submits that there is no error in the decision taken by the Council or in the judgment of the learned Single Judge so as to call for interference.

9. We have considered the submissions raised.

10. In order to appreciate the contentions advanced, Section 12 of the 1948 Act and Regulation 6 of the 2008 Regulations are extracted herein under:

"Section 12. Approved course of Study and Examinations:

(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 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."

11. The word "approval" used in Section 12 of the 1948 Act does not distinguish between a preliminary approval or a final approval. The approval for the course is for the purpose of admission, and the approval of the examination is for the purpose of declaring the candidate to be qualified for registration as a Pharmacist. A candidate will be qualified for registration only if he passes all the four years of examinations duly approved by the Pharmacy Council. The approval to the course of study is to enable the Council to keep a check on the institutions that the courses are being run in conformity with the education regulations as indicated in Section 12(1) of the 1948 Act. It is, therefore, evident that a composite approval is necessary in the case of a new institution, which would only be complete after the first batch of four years passes out and qualifies for registration as Pharmacist. This minimum of the first four years of the running of the institution, therefore, in our opinion, would be necessary for an eligibility to apply for introducing the course of Pharm.D.

12. A perusal of Section 12 of the 1948 Act would indicate that the phrase used in Section 12 is "a course of study". In our opinion, with regard to the present controversy, it has to be read with the word "programme" as used in Regulation 6 of the 2008 Regulations extracted herein above. The course of study in a programme would clearly mean the entire programme of four years and not each of the years segregated in respect of a newly established institution. Thus, an institution would become qualified for running a Pharm.D course only if it has

after its inception completed these initial four years of approved courses of study of B.Pharm and approved examinations as per Section 12(1) and (2) of the 1948 Act respectively.

13. In the instant case, the appellant institution admittedly started running just four years ago and has completed its first batch of four years only in April, 2020. Thus, in our opinion, the institution became qualified only in April, 2020 so as to apply for running a Pharm.D course. The conclusion, therefore, drawn in the impugned order that the application of the appellant institution was premature appears to be correct.

14. Learned counsel for the appellant urged that in Regulation 6, the words used are that an institution running a B.Pharm course would be eligible. If this is accepted, then an institution having run only for one year or say two years would also become eligible as it is running. The provision, therefore, cannot be interpreted in a way so as to defeat the very purpose of allowing the application to be filed by a College that has commenced running B.Pharm course and which has not even completed its four years of the first batch of students. This is because the infrastructure facilities have to be in place and the Council has to be satisfied that the institution is running satisfactorily after having been established.

15. We may clarify that our observations are in relation to this peculiar case, which has been set up as a new institution. So far as the institutions already having crossed the barrier of four years, they may be qualified and would be eligible otherwise if they meet the standards fixed, including the infrastructure facilities, that are required for running Pharm.D course as per the Regulations.

16. The word "approval" in Section 12 of the 1948 Act also needs to be clarified that the approval for the course of study is annual and so is the approval of the examinations each year. This provision, therefore, enables the Council to keep itself on guard with regard to the performance of the institution so that the approval is extended on year to year basis, and to intervene if any institution defaults in running the institution according to the norms prescribed. The learned Single Judge, therefore, was right in construing the word "approval" to be a final approval only after completion of four years, which obviously in the present context is about the establishment of a new institution.

17. The learned counsel then pointed out that the Pharmacy Council, however, supplemented reasons in the impugned order by explaining it in the counter-affidavit. The aforesaid

submission does not hold water, in view of the conclusions drawn herein above, as we have found that the appellant institution had moved a premature application. The provisions of Section 12 read with Regulation 6 have to be purposively interpreted to advance the cause for which the said provisions have been made. The contention of the learned counsel for the appellant that words cannot be supplanted in Regulation 6 by adding "after completion of four years" is not correct, as while interpreting the provision, the Court has to iron out the creases, and which according to us does not amount to weaving a new texture. There is no need for the Court to supplant any words as it is not even a case of casus omissus. The provisions have already been explained with the aid of the existing definitions by plainly construing them to give it a meaningful and pragmatic interpretation. The argument advanced by the appellant is otherwise also not sustainable.

Accordingly, we find no merits in the appeal, which is consigned to records, without prejudice to the rights of the appellant institution to apply for the future session, which shall be considered by the Pharmacy Council in accordance with law. No costs. Consequently, C.M.P.No.10928 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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.

+1cc to M/s.M.T.Arunan, Advocate in SR.NO..32021

W.A.No.874 of 2020

SAI (CO)
RV(07/10/2020)