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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 22nd December, 2020

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LPA 317/2020 & CM No.27319/2020 (for directions)

JAGANNATH INSTITUTE OF PHARMACY Appellant

Through: Mr. Sanjay Sharawat, Adv.

Versus

PHARMACY COUNCIL OF INDIA & ANR. Respondents

Through: Mr. Zoheb Hossain and Mr. Piyush
Goyal, Advs.

AND

+

LPA 330/2020 & CMs No.28219/2020 & 32461/2020 (both for directions)

ARYA COLLEGE OF EDUCATION Appellant

Through: Mr. Sanjay Sharawat, Adv.

Versus

PHARMACY COUNCIL OF INDIA & ANR. Respondents

Through: Mr. Zoheb Hossain and Mr. Piyush
Goyal, Advs.

AND

+

LPA 331/2020 & CMs No.28249/2020 & 32481/2020 (both for directions)

JAIHIND COLLEGE OF PHARMACY Appellant

Through: Mr. Sanjay Sharawat, Adv.

Versus

PHARMACY COUNCIL OF INDIA & ANR. Respondents

Through: Mr. Zoheb Hossain and Mr. Piyush
Goyal, Advs.

AND

+

LPA 333/2020 & CMs No.28269/2020 & 32482/2020 (both for directions)

DK AUTI COLLEGE OF PHARMACY Appellant

Through: Mr. Sanjay Sharawat, Adv.

Versus

PHARMACY COUNCIL OF INDIA & ANR. Respondents

Through: Mr. Zoheb Hossain and Mr. Piyush
Goyal, Advs.

AND

- + **LPA 341/2020 & CMs No.28943/2020 & 32483/2020 (both for directions) & 28944/2020 (for condonation of delay)**
N.K COLLEGE OF PHARMACY Appellant
Through: Mr. Sanjay Sharawat, Adv.
Versus
PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Adv.
- AND**
- + **LPA 345/2020 & CMs No.29084/2020 (for directions) & 29086/2020 (for permission to file additional documents)**
DATTAKALA INSTITUTE OF PHARMACY Appellant
Through: Mr. Atul Babasaheb Dakh, Adv.
Versus
PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Adv.
- AND**
- + **LPA 349/2020**
RUHI CONVENT EDUCATION AND RESEARCH SOCIETY Appellant
Through: Mr. Raj Kumar Ruhil, Adv.
Versus
PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Adv.
- AND**
- + **LPA 354/2020**
NAGFANI INSTITUTE OF PHARMACY Appellant
Through: Mr. Raj Kumar Ruhil, Adv.
Versus
PHARMACY COUNCIL OF INDIA Respondent
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Adv.
- AND**

- + **LPA 355/2020**
CHANDIGARH EDUCATIONAL SOCIETY Appellant
Through: Mr. Raj Kumar Ruhil, Adv.
Versus
PHARMACY COUNCIL OF INDIA Respondent
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Advs.
- AND**
- + **LPA 356/2020**
SHREE JI PHARMACY INSTITUTE Appellant
Through: Mr. Raj Kumar Ruhil, Adv.
Versus
PHARMACY COUNCIL OF INDIA Respondent
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Advs.
- AND**
- + **LPA 361/2020**
RAJ PHARMACY COLLEGE Appellant
Through: Mr. Raj Kumar Ruhil, Adv.
Versus
PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Advs.
- AND**
- + **LPA 366/2020 & CMs No.31299/2020 & 32460/2020 (both for directions), 31300/2020 (for condonation of 50 days delay in filing the appeal)**
SHATABDI INSTITUTE OF PHARMACY Appellant
Through: Mr. Sanjay Sharawat, Adv.
Versus
PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through: Mr. Zoheb Hossain and Mr. Piyush Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The appeals impugn the identical orders of the Single Judge, (i) dated 8th September, 2020 in CM APPL. no. 18219/2020 in W.P.(C) No. 12957/2019; (ii) dated 8th September, 2020 in CM APPL. NO. 18210/2020 in W.P.(C) No. 13293/2019; (iii) dated 16th October, 2020 in CM APPL. No. 23312/2020 in W.P.(C) No. 12348/2019; (iv) dated 16th October, 2020 in CM APPL. no. 23627/2020 in W.P.(C) No. 13963/2019; (v) dated 16th October, 2020 in CM APPL. no. 18225/2020 in W.P.(C) No. 13440/2019; (vi) dated 16th October, 2020 in CM APPL. no. 18318/2020 in W.P.(C) No. 13442/2019; (vii) dated 16th October, 2020 in CM APPL. no. 18216/2020 in W.P.(C) No. 13941/2019; (viii) dated 6th November, 2020 in CM APPL. no. 28147/2020 in W.P.(C) No. 13307/2019; (ix) dated 19th November, 2020 in CM APPL. no. 29527/2020 in W.P.(C) No. 13924/2019; (x) dated 19th November, 2020 in CM APPL. no. 29567/2020 in W.P.(C) No. 136/2020; (xi) dated 20th November, 2020 in CM APPL. no. 19848/2020 in W.P.(C) No. 13659/2019; and, (xii) dated 20th November, 2020 in CM APPL. no. 29766/2020 in W.P.(C) No. 13834/2019, filed by the appellants / writ petitioners, declining the interim relief sought by the appellants / writ petitioners.

2. The appellants / writ petitioners have set up institutions to impart education in Bachelor of Pharmacy (B. Pharm) and Diploma in Pharmacy (D. Pharm) courses and were desirous of applying to the respondent no.1 Pharmacy Council of India (PCI) for permission to admit the first batch of students in the academic session 2020-21.

3. The respondent no.1 PCI, vide letter dated 17th July, 2019, announced the result of the deliberations in the 106th Central Council Meeting of the respondent no.1 PCI and on 9th and 10th April, 2019, resolving to put a moratorium on opening of new pharmacy colleges for running diploma as well as degree courses in pharmacy, for a period of five years, beginning from the academic session 2020-21. This moratorium was ordered, taking into consideration the availability of sufficient qualified pharmacist work force. However, the moratorium was not applicable in the north-eastern region of the country, where according to the respondent no.1 PCI there was / is shortage of pharmacy colleges. Vide subsequent letter dated 9th September, 2019, it was declared, (a) that the moratorium will not apply to government institutions, institutions in north-eastern region and to States / Union Territories where the number of D. Pharm and B. Pharm institutions (both combined) was less than 50; (b) that institutions which had applied for opening of D. Pharm and/or B. Pharm colleges for academic session 2019-20, either to the Respondent no. 1 PCI or to the Respondent no. 2 All India Council for Technical Education (AICTE) and whose proposal was rejected or which was not inspected due to some reason or other, would however be allowed to apply for 2020-21 academic session; and, (c) that existing approved pharmacy institutions will be allowed to apply for increase in intake capacity as per the norms of the respondent no.1 PCI and / or to start additional pharmacy course(s).

4. Needless to state, it was the contention of the appellants / writ petitioners that they had, since at least a couple of years prior to the date when the moratorium was announced, started raising infrastructure for establishing an institution to impart education in pharmacy and the

moratorium suddenly announced, was prejudicial to them.

5. The writ petitions, from which these appeals arise, again needless to state, were accompanied with applications for interim relief. The Single Judge, vide orders dated 12th December, 2019, 24th December, 2019, 19th December, 2019, 17th December, 2019, 23rd December, 2019 and 8th January, 2020 on the said applications, with the consent at that moment of the counsels, granted permission to the appellants / writ petitioners to file applications with the respondent no.1 PCI for considering their case for setting up a new institution, for admitting students for the academic year 2020-21 and directed the respondent no.1 PCI to permit the said applications to be filed and to process the same, but ordered that no final decision will be taken till such time a decision was rendered on the merits of the writ petitions.

6. The writ petitions could not be taken up for hearing before the Single Judge owing to the prevalent pandemic. The appellants / writ petitioners filed applications aforesaid, seeking interim direction to the respondent no.1 PCI to take a final decision on the applications of the appellants / writ petitioners and to at the earliest grant approval for admitting students for the academic session 2020-21 and to permit the appellants / writ petitioners to admit students and commence the courses for the academic session 2020-21. The Single Judge, vide the impugned orders aforesaid declined the said interim relief, reasoning that grant thereof would virtually amount to allowing the writ petitions themselves and there was no cogent reason to pass such an order.

7. Aggrieved therefrom and urging that the appellants / writ petitioners were all ready and set with all requisite infrastructure and faculty, to commence teaching in pharma courses and that the Single Judge had erred in declining the interim relief, these appeals were preferred. Though these appeals also came before this Court as far back as in October-November, 2020, but were adjourned for some reason or the other. When these appeals came up before us yesterday, considering the urgency of the matter and since we were told that the last date for admission in the pharma courses for the academic session 2020-21 was 31st December, 2020, we took up the appeals for hearing and after partly hearing the counsels, listed the matters for today for remaining hearing.

8. The counsels for the appellants / writ petitioners have highlighted the merits of the case of the appellants / writ petitioners. On being reminded, that the writ petitions were not for hearing before us, they contended that they were attempting to satisfy us on the *prima facie* merit of the claim in the writ petitions and that the writ petitions are bound to be allowed. It is their contention, that (i) the respondent no.1 PCI has no power under the Pharmacy Act, 1948 to impose such a moratorium; (ii) even if the respondent no.1 PCI has power to impose a moratorium, the moratorium has been imposed arbitrarily; (iii) the impugned moratorium is retrospective in nature and character; even if there is power to impose moratorium, sufficient notice therefor needs to be given so that the educational institutions or those desiring to set up educational institutions know in advance, of the moratorium and do not spend money and effort in setting up an institution; setting up of an institution to impart education in pharmacy is a long process entailing acquisition of land, construction of the building, establishment of

the requisite labs, classrooms and other facilities and hiring of faculty and once the said process has been permitted to begin, no moratorium for the institution which have already commenced the process of setting up of the infrastructure, can be imposed; (iv) the institutions which had commenced the process of building infrastructure for imparting education in pharmacy, have a legitimate expectation of, if found complying with the requirements, being able to commence imparting education; (v) the moratorium is also arbitrary as no data, on the basis whereof conclusions have been drawn of existence of sufficient number of colleges, has been made available; (vi) in the face of the prevalent pandemic which has brought focus on the health sector, to which the institutions of the appellants / writ petitioners belong, in any case, moratorium ought to have been reviewed, as the prevailing pandemic has led to shortage of health sector workers; (vii) the moratorium is also arbitrary and whimsical as is evident from the exceptions carved out thereto vide the impugned communication dated 9th September, 2019; (viii) there is no rational for permitting new pharmacy institutions to come up in the north-eastern part of the country; (ix) in fact, in some of the States, the last date for admission to B. Pharm and the D. Pharm course is beyond 31st December, 2020; and, (x) the High Court of Karnataka has already declared the said moratorium to be bad and struck down the same in ***Shifa College of Pharmacy Vs. Pharmacy Council of India MANU/KA/4155/2020***; reliance is placed on ***Kusum Ingots & Alloys Ltd. Vs. Union of India*** (2004) 6 SCC 254 to contend that since moratorium announced by respondent no.1 PCI was all India and has been struck down by one High Court, the said judgment is applicable across India.

9. We have asked the counsels for the appellants / writ petitioners that even if the appellants / writ petitioners score 100% on the ingredient of having a *prima facie* case, whether not to be entitled to interim relief, are also required to satisfy the ingredients of suffering irreparable loss and injury, if the interim relief is not granted and of having the balance of convenience in their favour.

10. We have further enquired, whether not, the educational institutions of the appellants / writ petitioners are required to work on no loss no profit basis and where is the question of any loss, if declined the permission to admit students in this year inasmuch as if the writ petitions which are still pending are decided in favour of the appellants / writ petitioners, the appellants / writ petitioners would be entitled to admit students for the next academic session 2021-22.

11. We have yet further enquired, whether not the appellants / writ petitioners, after July, 2019, i.e. well before the last date for applying for permission to set up new institutions / admit students for the academic session 2020-21, informed to be 13th January, 2020, knew of the moratorium and ought to have put the steps underway, if not of building infrastructure, of hiring faculty, to a halt and if did not do so, the further steps taken, were taken at their own risk. It has further been enquired, whether not there is merit in the reasoning of the Single Judge in the impugned order that the interim relief, if granted to the appellants / writ petitioners, would be the same as the final relief claimed in the writ petitions and amount to allowing the writ petitions themselves. It has further been put to the counsels for the appellants / writ petitioners that if according to the appellants / writ

petitioners they were entitled to benefit of the judgment of the High Court of Karnataka and the respondent no.1 PCI was not granting benefit of the said judgment to the appellants / writ petitioners, the remedy of the appellants / writ petitioners was to approach the Karnataka High Court for enforcing the said order qua the appellants / petitioners and / or for initiating action against respondent no.1 PCI for contempt of Court.

12. The counsel for the appellants / writ petitioners has drawn our attention to the dicta of the Supreme Court in *Deoraj Vs. State of Maharashtra* (2004) 4 SCC 697 holding that facts of some cases require issuance of mandamus even at an interim stage, even if it tantamounts to granting the final relief itself; these are cases where the case of the plaintiff is so strong that balance of convenience and irreparable injury forcefully tilt the balance totally in favour of the applicant and not granting the interim relief would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing and the Court, at the end, being not able to vindicate the cause of justice – these are rare cases, where injury complained of is immediate and pressing and cause extreme hardship.

13. Undoubtedly so, but the present is not a case where declining interim relief to the appellants / writ petitioners would result in making the pending writ petitions infructuous. The appellants / writ petitioners institutions have been set up, not for one year only, but for years to come and can always, in January, 2021, apply for permission for admitting students for the academic session 2021-22, in the event of succeeding in the writ petitions.

14. There is another aspect of the matter. The grant of interim relief, in reliefs of some nature, besides the ingredients of *prima facie* case, irreparable loss / injury and balance of convenience, also must satisfy the ingredient, of public interest. We have enquired, whether not though the appellants / writ petitioners will not suffer any monetary loss but if permitted to admit students and ultimately losing in the writ petitions, would inflict harm and injury on the students so admitted, under the interim order, and which practice has been deprecated by the Courts.

15. The counsel for the respondent no.1 PCI has drawn attention to ***Dental Council of India Vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli*** (2017) 13 SCC 115, ***Medical Council of India Vs. N.C. Medical College & Hospital*** (2019) 17 SCC 655 and ***Medical Council of India Vs. Jaipur National University Institute for Medical Sciences and Research Centre, Jaipur*** (2018) 17 SCC 439. The Supreme Court has opined that the Courts should desist from allowing students to be admitted under interim orders and the fate of which students, without any fault of theirs, hangs in the balance till the final decision and if the writ petitions are dismissed, which students suffer loss of education and academic year.

16. Though the counsels for the appellants / writ petitioners have contended that the students once permitted to be admitted can continue their education for the entire term of the course and / or that there is a provision for migration to other colleges but the reality of life cannot be lost sight of. Migration poses immense difficulties including of compelling students to travel to far off places and / or stay away from their home. Even if the students so admitted are permitted to complete the course, reality of life is

that the students are deprived of the quality education in the face of fleeing faculty and depleting infrastructure. Thus, besides the fact that the appellants / writ petitioners do not satisfy the ingredients of irreparable loss and injury and balance of convenience, they also do not satisfy the ingredient of public interest and particularly the public interest of the students who may, without knowing of the full consequences, seek admission to the appellants / writ petitioners institutions, putting their careers at stake till the decision of the writ petitions and suffering in the event of the writ petitions being finally dismissed.

17. Moreover, in exercise of jurisdiction under Letters Patent and under Section 10 of the Delhi High Court Act, 1966, the decision of the Single Judge is not to be interfered with, if a plausible one. For all the reasons given hereinabove, though may not have been spelled out in as many words in the impugned orders, the impugned decision does not call for any interference in these appeals.

18. The counsels for the appellants / writ petitioners, at this stage, state that the writ petitions, before the Single Judge are listed next on 8th February, 2021 and the Single Judge has already observed that the writ petitions are incapable of being heard virtually; if the physical hearing in the Courts is not resumed by 8th February, 2021, the writ petitions will be further adjourned, depriving the appellants / writ petitioners from opportunity for applying for admission of students for the academic year 2021-22 also and which process is likely to commence in January, 2021.

19. We find merit in the aforesaid contention and while dismissing these appeals, request the Single Judge to, on application being filed by the appellants / writ petitioners, endeavour to prepone the hearing to the month of January, 2021 itself and to dispose of the writ petitions either well before the last date for applying for admission of students for the academic session 2021-22 or to appropriately mould the interim relief, to enable the appellants / writ petitioners to, if succeeding in the writ petitions, apply for admitting and admit students for the academic session 2021-22.

20. The appeals are disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 22, 2020

‘gsr’..