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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 5247 of 2021 (O&M)

Date of Decision: September 03, 2021

Sat Kabir College of Pharmacy

.....Petitioner

versus

Pt B.D. Sharma University of Health Science Rohtak and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Praveen Gupta, Advocate
for the petitioner

Mr. Teevar Sharma, Advocate
for respondent No.1

Ms. Upasana Dhawan, AAG Haryana

Mr. S.K. Sharma, Advocate
for respondent No.3

Sudhir Mittal, J. (Oral)

CM No. 12379 of 2021

This application has been filed for placing on record Annexures R-1/5 to R-1/18 and for exemption from filing certified/true typed copies thereof.

Notice of the application.

Mr. Praveen Gupta, Advocate accepts notice on behalf of the non-applicant/petitioner and has no objection in case the application is allowed.

Accordingly, application is allowed and Annexures R-1/5 to R-1/8 are taken on record. Exemption sought for is granted.

CWP No. 5247 of 2021

The petitioner-College has impugned order dated 23.02.2021

(Annexure P-9) whereby its application for affiliation has been rejected on the

ground that it was received after 31.12.2020. The order is termed as illegal and arbitrary.

Respondent No. 3 - Pharmacy Council of India issued a public notice dated 30.12.2020 inviting applications for commencing new Pharmacy courses. The last date for submission of applications was 31.01.2021. Alongwith application, it was necessary to submit a consent of affiliation of a University and No Objection Certificate of the relevant State Government. Accordingly, the petitioner submitted an application dated 11.01.2021 before the respondent-University seeking consent for affiliation. The same has been rejected vide order dated 21.01.2021 on the ground that it was submitted after the specified last date.

Learned counsel for the petitioner has submitted that according to the Statutes, Ordinances and Regulations of the respondent-University, the Ordinance regarding conditions of affiliation of colleges and institutions to the privileges was approved by the Executive Council in its meeting held on 19.08.2008. According to the said Ordinance, the last date of making applications for affiliation is 31st March of the concerned year on payment of 100% extra charges. That being the case, the respondent-University could have only demanded additional charges but could not have rejected the applications. Further, it has been submitted that reliance by the respondent-University on communication dated 17.09.2019 amending schedule for submission of applications is misplaced. Ordinance could have been amended only by the Executive Council and the record does not indicate that the Executive Council has approved communication dated 17.09.2019. Hence, the communication dated 17.09.2019 can not amend the schedule for submission of applications as the Ordinance remains unamended. Finally, it has been submitted that normally respondent No. 3 invites applications for new courses in the month of September of the previous year. The present public notice got delayed by three months on account of ongoing COVID-19 pandemic. Thus, the respondent-

University should have been flexible and should not have insisted upon adherence of the time schedule prescribed vide communication dated 17.09.2019.

Learned counsel for the respondent - University submits that Memo dated 17.09.2019 was approved by the Executive Council on 21.05.2021 and a copy of the approval is annexed as Annexure R-1/7. Approval was followed by Memo dated 09.06.2021, which categorically states that the decision has come into force w.e.f. 17.09.2019, the date of the Memo. Thus, ordinance stood amended w.e.f. 17.09.2019 and that the argument that the time schedule was not modified/amended is misconceived. The amendment was necessitated on account of the judgment of the Hon'ble Supreme Court dated 13.12.2012 passed in Civil Appeal No. 9048 of 2012 titled as ***Parshavanath Charitable Trust and others vs. All India Council for Technical Education and others***. According to the said judgment, the last date for granting or refusing approval by the University is 15th May. The process being lengthy the time schedule was amended to ensure that the last application was received on or before 30th December of the preceding year. Further, it has been submitted that the Ordinance relied upon by learned counsel for the petitioner prescribes that NOC of the State Government must accompany the application for consent of affiliation. Admittedly, the NOC from the State Government had been applied for on the date of application and, thus, the application was bound to be rejected on this ground as well.

During the course of arguments, learned counsel for the petitioner had stated that normally applications are invited by respondent No. 3 on or before 30th September of the preceding year. In the year 2020, the notice inviting applications was delayed on account of COVID-19 pandemic. On being questioned, counsel for respondent No. 3 affirms this fact.

In view of the above, the writ petition can be decided without going

into the issue whether Ordinance stood amended or not.

Normally, the public notice inviting applications would be in the public domain or before 30th September of the preceding year. That being the case and keeping in view the judgment of the Hon'ble Supreme Court in ***Parshavanath Charitable Trust (supra)***, the respondent-University would be justified in restricting the applications to 30th December of the previous year. In this case, the public notice itself was issued on 30.12.2020. Thus, to expect a College to apply for consent within one day is unreasonable. The respondent-University should have been flexible in its approach rather than pedantic. The issues such as these are procedural only and must be settled amicably rather than forcing parties to go in for litigation. The public notice having been published on 30.12.2020, three months minimum time should have been provided for submission of applications. The respondent-University should have stuck to the previous time schedule and should have accepted applications upto 31st of March.

The argument that No Objection Certificate from the State Government was not annexed also deserves to be rejected because this is not the reason for rejection of the application.

In view of the above, the writ petition is allowed and orders dated 21.01.2021 as well as 23.02.2021 are set aside. The application dated 11.01.2021 (Annexure P-4) be decided afresh on its own merits within four weeks from the date of receipt of certified copies of this order.

September 03, 2021

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No