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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision 4th June, 2021

+ W.P.(C) 3196/2021

SIDDHARTH INSTITUTE OF
TECHNOLOGY & ANR.

..... Petitioners

Through: Mr. Amitesh Kumar, Advocate
with Ms. Priti Kumari and Ms.
Binisa Mohanty, Advocates

versus

PHARMACY COUNCIL OF INDIA

..... Respondent

Through: Mr. Zoheb Hossain, Advocate
with Mr. Piyush Goyal,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner seeks a direction upon the respondent/Pharmacy Council of India ["PCI"] to process its application dated 10.02.2021 for grant of recognition to its Bachelor of Pharmacy ["B.Pharm"] course for the academic year 2021-22. The petitioner has made an alternative prayer for a direction upon the respondent to provide a link to the petitioner for submission of its online application seeking recognition of the said course.

Signature Not Verified

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NAGPAL

Signing Date: 06.06.2021

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2. The petitioner is an established institution running a Diploma in Pharmacy [“D.Pharma”] course since 2016-17. It desired, in addition, to establish a B.Pharma course from the academic year 2021-22.
3. The case of the petitioner is that, pursuant to a public notice dated 30.12.2020, the PCI opened its portal for submission of approval applications for the academic year 2021-22. Existing institutions were entitled to apply for continuation of approval, as well as for introduction of new courses. Under the aforesaid circular, the portal was to remain open during the period 04.01.2021 to 31.01.2021. By a subsequent notice dated 04.02.2021, the portal was opened once again, for the period from 08.02.2021 to 10.02.2021, as a last opportunity to existing institutions for submission of online applications.
4. The petitioner made its online application for renewal of permission for the D.Pharma course in January, 2020. However, at the relevant time, the petitioner did not possess a “No Objection Certificate” [“NOC”] from the State Government as required under the Notice dated 30.12.2020 for establishment of a new B.Pharma course. According to the petitioner, it was for this reason that it did not simultaneously make an application in respect of its proposed B.Pharma course.
5. According to the pleadings in the writ petition, the petitioner applied for the NOC to the Government of Rajasthan on 08.02.2021, and the State issued the NOC on 10.02.2021, being the last date for submission of applications on the PCI portal.
6. The petitioner claims thereafter to have made several attempts to log in to the portal in order to submit its application for the

B.Pharma course, but was not given access. The petitioner has also placed on record an email dated 10.02.2021, sent to the Registrar of the PCI, with a request to open the portal to enable it to submit its application. The petitioner has stated that, in view of its inability to submit the online application, it submitted the application offline on 10.02.2021, alongwith the NOC granted by the State Government, and that the offline application was delivered to the PCI's office on 15.02.2021.

7. It is in these circumstances that the petitioner seeks a direction upon the respondent to process its application for grant of recognition of the B.Pharma course or, alternatively, an opportunity to submit the online application belatedly.

8. During the course of arguments, Mr. Amitesh Kumar, learned counsel for the petitioner, pointed out that in the Notice dated 30.12.2020, the PCI had stipulated the documents required for submission of an application for the B.Pharma course. Clause (3) of the said Notice, insofar as it relates to the B.Pharma course and Clause (6) thereof, is reproduced below: -

*“3. The approval process for the academic year 2021-22 for **introduction of new pharmacy course(s) by existing institutions** the institution will have to apply on the portal along with requisite fees and submit the below mentioned documents mandatorily at the time of application for consideration of the application –*

*a) **For B.Pharm course***

i) Consent of affiliation of Examining Authority

ii) NOC of the State Government

In case, the State Government has done away with the issuance of NOC of the State Government for starting of pharmacy course, in that case institution shall upload the said communication from the State Government as a documentary evidence.

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6. Please note that -

i) submission of above-mentioned statutory documents is a pre-requisite mandatory requirement.

ii) in the absence of submission of pre-requisite mandatory documents as detailed above, application will be rejected for introduction of new course, raise in admission and services.”

9. Mr. Kumar also drew my attention to the provisions of a further Notice dated 31.12.2020, whereby the PCI had stipulated certain precautions to be taken by applicant institutions. In particular, Mr. Kumar drew my attention to the fact that applicants were cautioned that if any details are found missing, the application would not be processed for approval, leading to a “no admission year” for the institution, and debarment of the principal from holding any administrative position in the future. The stipulations contained in Clause 3(a) of the Notice dated 30.12.2020 were reiterated in Clause 2(f) of the aforesaid Notice dated 31.12.2020. In addition, in the Notice dated 31.12.2020, the following notes were also added: -

“Please note that -

i) the above documents should be in English duly signed by the Principal and legible.

ii) in case the above documents are not submitted, the proposal for introduction of new course will not be

entertained by the Council and will be summarily rejected.

iii) the submission of above documents will not be considered as a compliance during the appeal period.”

10. According to Mr. Kumar, the petitioner, being cognisant of the aforesaid requirements and of the potential consequences of non-supply of the required documents, did not make an application for the approval of the B.Pharma course prior to obtaining the NOC from the State of Rajasthan. However, after obtaining the said NOC, the petitioner attempted to make its application on the portal. Mr. Kumar's submission is that the petitioner's failure to make the application in time was due to a technical problem that it was unable to access the portal on the last date for submission, i.e., 10.02.2021.

11. Mr. Zoheb Hossain, learned counsel for the PCI, submits that, even if the petitioner's case is considered on the basis of the pleadings in the writ petition, the petitioner's application could not have been submitted on 10.02.2021. This is because the petitioner did not have the other mandatory document required, viz. the consent of affiliation of the examining authority. In this connection, Mr. Hossain draws my attention to a document dated 26.02.2021 [annexed to the writ petition as Annexure P-12], by which the petitioner has submitted fees to Rajasthan University of Health Sciences, its affiliating University, for renewal of affiliation for the D.Pharma course and fresh affiliation for the B.Pharma course for the year 2021-22. Mr. Hossain submits that the consent of affiliation from the affiliating University was also required under the notices dated 30.12.2020 and 31.12.2020. On the petitioner's own showing, the aforesaid document was not available

with it prior to 10.02.2021, and the petitioner's application, therefore, would have been incomplete as on that date.

12. Mr. Kumar, in rejoinder, urges that this ground has not been taken in the counter affidavit filed by the PCI. He submits that, in any event, the procedure in the State of Rajasthan is that an institution can apply for consent of affiliation of the examining authority only after obtaining the NOC of the State Government. According to Mr. Kumar, the NOC of the State Government having been obtained only on 10.02.2021, the petitioner could not have applied for consent of affiliation of the University prior to the said date. He further submits that the PCI does not, in practice, insist upon the consent of affiliation being submitted at the stage of submission of applications, but in fact accepts the consent of affiliation even if it is submitted at a later stage, including at the stage of appeal.

13. Having heard learned counsel for the parties, I am of the view that the petitioner is not entitled to the relief sought in the present case. The notices dated 30.12.2020 and 31.12.2020, which are relied upon by the petitioner, make it abundantly clear that there were two mandatory documents for an existing institution to apply for approval of a new B.Pharm course – the consent of affiliation of the examining authority (i.e., the University) and the NOC of the State Government. That both documents were mandatory is clear from Clauses 3(a) and 6 of the Notice dated 30.12.2020, and reiterated in the Notice dated 31.12.2020, as extracted above. In the face of these express provisions, the argument of Mr. Kumar that the consent of affiliation of the University was not required to be submitted at that stage, cannot

be accepted. The petitioner cannot be heard to argue against the clear and unambiguous requirements of the Notices under which it claimed to submit its application.

14. Further, in the writ petition itself, no such case has been made out. In the face of the Notices dated 31.12.2020 and 31.12.2020, which provide *ex facie* that two documents were required, the petitioner's case is that one document was, in fact, not required. In such a situation, the least that is expected is that this case would be made out in the writ petition itself. It is submitted by Mr. Kumar at the Bar that this is the practice of the NCTE, at least as far as the State of Rajasthan is concerned. The factual foundation for such a plea has not been laid in the writ petition at all. The writ petition instead proceeds only on the issuance of the NOC by the State Government, and is entirely silent as to the status of the consent of affiliation of the University.

15. The argument of Mr. Kumar, with regard to the caution against submission of incomplete documents, as stipulated by the PCI in the Notice dated 31.12.2020, applies equally to both the documents in question. The petitioner's case (articulated in paragraphs 15 and 24 of the writ petition) is that it did not submit the application in respect of the B.Pharma course when the portal was open in January 2021, due to the possible consequences of incomplete documentation, viz., a "no admission year" and action against its principal. Mr. Kumar's subsequent argument that an incomplete application, i.e., one without the consent of affiliation, would have been accepted by the PCI, is inconsistent with the petitioner's pleaded position.

16. For the reasons aforesaid, it is clear that, regardless of the time when the petitioner obtained the NOC from the State Government, its application for approval of its new B.Pharm course was incomplete as on the last date for submission of applications, as it had admittedly not obtained the consent of affiliation of the examining body. The petitioner is therefore not entitled to consideration of its application in this behalf for the year 2021-22, either by processing its offline application dated 10.02.2021, or by provision of a link for submission of the online application.

17. At this stage, Mr. Kumar seeks permission to file an affidavit in rejoinder to deal with the contention of Mr. Hossain, and place its case on record. However, I am of the view that the present case is capable of adjudication on the facts placed on record in the writ petition itself, which have been adverted to hereinabove. It is therefore unnecessary to call for a further affidavit at this stage. Further, it is undisputed that the time for processing of applications for the year 2021-2022 has been extended by the Supreme Court only until 15.06.2021, by an order dated 07.05.2021 in M.A. No. 599/2021 in C.A. No. 9048/2012 [*Parshavanath Charitable Trust & Anr. vs. All India Council for Tech. & Ors.*].

18. In view of the aforesaid position, the petitioner has not made out a case for exercise of the jurisdiction under Article 226 of the Constitution. The petition is therefore dismissed.

JUNE 4, 2021/'j'

PRATEEK JALAN, J