

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 12057 of 2021

***Kalinga Bharati Foundation,
Bhubaneswar & Anr.***

.....

Petitioners

Mr. B. P. Das, Advocate

Vs.

Union of India & Ors.

.....

Opposite Parties

*Mr. C. Pradhan, Sr. Panel Counsel,
Govt. of India,
(O.P.1 & 6)*

*Mr. P.P. Mohanty, AGA
(O.Ps.2-5)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

22.09.2022

Order No.

05

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Das, learned counsel for the petitioner; Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties and Mr. C. Pradhan, learned Senior Panel Counsel, Govt. of India, appearing for opposite parties no.1 & 6.

3. The petitioners have filed this writ petition seeking to quash the instruction dated 09.09.2019 issued by opposite party no.1 under Annexure-11, and to issue direction to opposite parties no.4 & 5 to allow the representation of the petitioners dated 26.02.2019 under Annexure-7 and representation dated 25.08.2020 under Annexure-9 for grant of NOC (No Objection

Certificate) and further to issue direction to opposite parties no.1 & 6 to provide Web Portal ID as prayed under Annexure-8 before opposite party no.6 and allow the petitioner's application of Standard Inspection Format (SIF-C) under Section 12 of Pharmacy Act, 1948 to open B. Pharma and D. Pharma courses for the academic year 2021-22 and the delay attributed by the authorities in providing mandatory prerequisite documents shall not bar the admissibility of the application and the petitioner shall not suffer due to such delay.

3. Mr. B.P. Das, learned counsel appearing for the petitioners contended that similar matter had come up for consideration before the High Court of Chhattisgarh at Bilaspur in ***Chouksey College of Pharmacy Run by H.K. Kalchuri Educational Trust, through its Director Mrs. Palak Jaiswal & Anr. V. Pharmacy Council of India, through its Chairman/Secretary & Ors.***, 2022 SCC Online Chh 762, before the High Court of Karnataka at Bengaluru in ***Pharmacy Council of India, NBCC Centre, New Delhi v. Rajeev College of Pharmacy, Bangalore*** (W.A. No.746 of 2020 (EDR-REG) in W.P. No.52868 of 2019 (EDN-REG) disposed of on 09.11.2021) and before the High Court of Delhi in ***Shaheed Teg Bhadur College of Pharmacy v. Pharmacy Council of India***, 2022 SCC Online Del 684, wherein the claim of the petitioners therein was allowed. Against the judgment passed by the High Court of Karnatak, ***Pharmacy Council of India*** approached the apex Court by filing SLP (Civil) No.19671 of 2021 which has been registered as Civil appeal No.6681 of 2022 and the apex Court vide judgment dated 15.09.2022

dismissed the said SLP and accordingly, the writ petition filed by the institution was also disposed of in terms of the said judgment. Therefore, it is contended that since the petitioner-institution claiming same benefit has approached this Court, the writ petition be disposed of in terms of the judgment of the apex Court in ***Pharmacy Council of India v. Rajeev College of Pharmacy***, 2022 SCC Online SC 1224.

4. Mr. C. Pradhan, learned Senior Panel Counsel, Govt. of India, appearing for opposite parties no.1 & 6 though admitted that the Civil Appeal filed by the Pharmacy Council of India has been dismissed, but he contended that in paragraphs-55 & 56 of the said judgment, the apex court held that a Division Bench of the Bombay High Court, Aurangabad Bench in a batch of writ petitions being Writ Petition No.4919 of 2020 (***Sayali Charitable Trust's College of Pharmacy v. The Pharmacy Council of India***, decided on 6th November, 2020) held that the Resolutions/communications dated 17.07.2019 and 09.09.2019 of the Central Council, which are in the nature of executive instructions, could not impose restrictions on the fundamental right to establish educational institutions under Article 19(1) (g) of the Constitution of India, the apex court does not find it necessary to consider the submissions advanced on other issues.

5. Having hearing learned counsel for the parties and after going through the records, since the issue involved in this case has already been decided by the apex Court in ***Pharmacy Council of India*** (supra), this Court is of the considered view that nothing remains to be adjudicated in the present case as the

position has been settled by the apex Court. Therefore, this writ petition stands disposed of in terms of the judgment of the apex Court in *Pharmacy Council of India* (supra).

6. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok

(G. SATAPATHY)
JUDGE

