

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1058 OF 2022

Sakshi Shahurao Sakhare & Ors. ..Petitioners

V/s.

The State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 1270 OF 2022**

Satish Vitthal Thorat & Ors. ..Petitioners

V/s.

The State of Maharashtra & Ors. ..Respondents

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Mr. Mohit Deshmukh for the Petitioners in both petitions.

Mr. P.S. Patil, AGP for the Respondent/State.

Mr. C.V. Dharurkar for Respondent No.3.

Mr. S.B. Deshpande for Respondent No.4.

Mr. Rahul Madan for Respondent No. 5.

Mr. S.S. Bora for Respondent No.6.

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, J.J.**

**RESERVED ON : 30 JUNE 2022
PRONOUNCED ON : 19 SEPTEMBER 2022**

COMMON JUDGMENT (PER : C.V.BHADANG, J.)

. Both these petitions involve common questions of law and facts. They were heard finally by consent of parties and are being disposed of by this common judgment.

2. The petitioners herein are students, who had secured admission in the respondent Colleges of Pharmacy in the academic year 2019-20 on the basis of a Centralized Admission process (CAP Rounds) conducted by Directorate of Technical Education(DTE). They have successfully completed two years Diploma course in Pharmacy (D. Pharm) conducted by Maharashtra State Board of Technical Education(State Board). After completion of the Diploma, the petitioners visited the Official Website of the respondent Maharashtra State Pharmacy Council ('State Council' for short) for enrolling themselves as registered Pharmacists. However, on account of non availability of respondent No. 6 college in the 'drop down window', on the website of the State Council, the petitioners were unable to obtain the required registration. On enquiry it was learnt that the respondent No.6 college had affiliation with the Pharmacy Council of India ('Central Council' for short) from the academic year 2020-21 and not from 2019-20 when the petitioners had secured their admission.

3. By these petitions, the petitioners are seeking a direction against the Central and the State council and the college to take necessary steps in order to enable the petitioners to obtain the registration. The third respondent in the petitions is the All India Council for Technical Education (AICTE).

4. The Central Council has filed an affidavit in reply stating that the college did not apply online for the academic year 2019-20. As such there is no approval for the said academic year. Such approval was for the first time granted for the academic year 2020-21, with an intake capacity of 60 students. The Central Council has opposed the petition on the ground that in Education matters the Courts would be slow to interfere as the matter has to be left to the discretion of the experts in the field.

5. The respondent No.6 Kadam College of Pharmacy (WP No 1270/2022) has filed an affidavit of Principal Mr. Rahul Mohan. It is contended that the college only conducts a diploma course in Pharmacy from the year 2019. For purpose of the commencement of the course for the academic year 2019-20, a proposal was submitted to the AICTE in prescribed format before the cutoff date and the fees were paid online on 5.2.2019. The AICTE conducted an inspection of the college and it was found that the college has requisite staff, equipment and other facilities. The AICTE accordingly granted approval for the course on 30.4.2019. Based on this, the Government of Maharashtra by GR dated 25.6.2019 granted permission by issuing a letter of intent to start the course with intake capacity of 60 students for the academic year 2019-20. The DTE granted the necessary approval on 29.6.2019. The DTE has also allotted the necessary code to the college for participation in the CAP rounds. 'The

State Board, which the examining body had allotted the examination code. The College has pointed out that the college had not applied to the the Central Council for approval. Therefore the Government while issuing the GR dated 25.6.2019 had imposed a condition of obtaining the approval from the Central Council within a period of six months. Similar condition has also been imposed by the State Board and the DTE. It is pointed out that the online proposal could not be submitted as the last date was 8.2.2019 and the portal was closed thereafter. The college after taking guidance from the State Council submitted an offline proposal on 18.11.2019 with the required fees of Rs. 75,000/- vide Demand Draft dated 13.11.2019. The proposal was returned by the Central Council after almost two years on 20.9.2021 for the reason that the proposals for the Academic Year 2019-20 were called online. It is submitted that in order to enable the students to obtain registration, the college needs to have approval from the Central Council under section 12 of the Pharmacy Act, 1948. Subsequently, the college submitted the online proposal and the Central Council has granted the 'Course Conduct Approval' on 10.4.2020 for 2020-21 for the first year only. Thus, the students, who had secured admission in the year 2019-20 have not been considered by the Central Council. It is submitted that in the year 2019, the issue whether the AICTE or the Central Council will have supremacy and primacy in the matter of education in Pharmacy was

pending, which has been resolved by the Supreme Court on 5.3.2020. It is submitted that the Supreme Court has protected the students, who were admitted on the basis of the approval granted by the AICTE. It is contended that the fact that the Central Council has also granted 'Course Conduct Approval', from 2020-21 shows that the college had all the facilities to the satisfaction of the Central Council for conducting the course.

6. The reply filed by respondent No.6 Vasant Pharmacy College (WP No. 1058/2022) is on similar lines.

7. We have heard the learned counsel for the parties.

8. The learned counsel for the petitioners has submitted that the petitioners had secured admission on the basis of the CAP rounds and the college was having approval from the AICTE and the State Government as also the DTE. It is submitted that the examining body had also granted affiliation/approval. It is thus submitted that except that the college had no approval for the year 2019-20 on account of a technical issue about submission of a online proposal, there are no other irregularities in the admission and the completion of the diploma course by the petitioners.

9. On behalf of the petitioners reliance is placed on the decision of the Supreme Court in *Pharmacy Council of India V/s Dr. S. K. Toshniwal Educational Trust's Vidarbha Institute of Pharmacy and others*¹ and *Shirpur Education Society though Principal Vs The State of Maharashtra and others* (Civil Appeal No. 892/2020 decided on 31.1.2020). It is submitted that the issue about primacy between Central Council and AICTE was set at rest on 5.3.2020. He, therefore, submitted that the petitioners cannot be made to suffer for no fault of theirs.

10. The learned counsel for the contesting respondent No.4-Central Council has submitted that Central Council has been held to have primacy in the matter of pharmacy education and the college had admitted students without approval of Central Council. It is submitted that in the year 2019-20 the applications were required to be submitted online. The concerned college did not submit application online within time as a result of which the application submitted physically has been returned. He submitted that the petitioners cannot be granted protection and registration.

11. We have considered the submissions made

12. The relevant facts are not in dispute. The dispute pertains to the petitioners, who had secured admission to the

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Diploma Course in the year 2019-20. At the relevant time, the issue about primacy between AICTE and Central Council in the matter of education in Pharmacy courses was not settled. The issue was finally set at rest by the Supreme Court on 5.3.2020 in the case of Pharmacy Council of India (supra) in which it has been held that Central Council will have supremacy/primacy in the matter. There were cases where various colleges had admitted students in excess of the sanctioned intake by Central Council as despite refusal by Central Council, AICTE had increased the intake capacity. The Supreme Court while protecting the students, who were admitted under the orders of the Supreme Court or the High Courts had directed consequential benefit of registration to these students. The Supreme Court directed that all pending applications for increase in intake capacity and/or recognition and/or approval of course/institutions to be decided as per the provisions of the Pharmacy Act, 1948 and the regulations, if any, thereunder and as per the norms and regulations fixed by Central Council.

13. Coming to the present case, the respondent college in these petitions had applied to AICTE and an inspection was conducted and the colleges were found to have all the facilities for conducting the course. No irregularities were found during inspection. The colleges have also obtained approval from the State Government and the DTE. The colleges have also been

granted affiliation by the examining body namely the State Board. The students had secured admissions through the CAP rounds. It can further be seen that the colleges had made an attempt to apply for the approval of the Central Council. However, could not submit the online application on account of the closure of the portal owing to the last date that is 8.2.2019. The physical application was submitted along with necessary fees, which the Central Council has returned after a period of almost two years, only on account of the fact that in the relevant year, the application was required to be submitted online. It can further be seen that in the next year that is 2020-21 the Central Council has also granted approval however for the first year D. Pharm Course leaving the petitioners in lurch. Once the Central Council had granted approval on inspection, it can be safely assumed that even as per the Central Council norms, the colleges were having required infrastructural facilities including staff to conduct the course. We find that at the relevant time the issue about primacy between the two regulatory bodies namely the AICTE and the Central Council was not settled. It was set at rest only on 5.3.2020. We also find that the application for approval could not be submitted on account of a technical requirement of the necessity to submit the same online. As noticed earlier, the applications submitted physically were returned by the Central Council after about two years on the ground that in the relevant year the applications were required to be submitted online.

14. Considering the overall circumstances, we find that the petitioners are entitled to registration as per the applicable norms of Central Council.

15. In the result, both petitions are allowed. The respondent Nos. 4 and 5 are directed to include the name of the respondent No. 6 College/institution on the online portal/website to facilitate enrollment of the petitioners as Pharmacists. The respondent Nos. 4 to 6 shall take all necessary steps for processing the applications of the petitioners for registration as Pharmacists subject to the petitioners complying with all other requirements. The applications shall be processed within a period of two months from today.

16. Rule is made absolute in the aforesaid terms with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.