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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 07th March, 2022

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W.P.(C) 175/2021SHAHEED TEG BHADUR
COLLEGE OF PHARMACY

..... Petitioner

versus

PHARMACY COUNCIL OF INDIA

..... Respondent

with W.P.(C) 176/2021, W.P.(C) 177/2021, W.P.(C) 178/2021,
W.P.(C) 179/2021 & CM APPL. 525/2021,
W.P.(C) 180/2021 & CM APPL. 526/2021,
W.P.(C) 182/2021 & CM APPL. 530/2021,
W.P.(C) 183/2021 & CM APPL. 532/2021,
W.P.(C) 184/2021 & CM APPL. 533/2021,
W.P.(C) 185/2021 & CM APPL. 534/2021,
W.P.(C) 188/2021 & CM APPLs. 537-539/2021,
W.P.(C) 189/2021 & CM APPL. 540/2021,
W.P.(C) 190/2021 & CM APPL. 541/2021,
W.P.(C) 191/2021 & CM APPL. 542/2021,
W.P.(C) 193/2021, W.P.(C) 194/2021 & CM APPL. 545/2021,
W.P.(C) 195/2021 & CM APPL. 546/2021,
W.P.(C) 196/2021 & CM APPL. 547/2021,
W.P.(C) 197/2021 & CM APPL. 548/2021,
W.P.(C) 198/2021 & CM APPL. 549/2021,
W.P.(C) 199/2021 & CM APPL. 550/2021,
W.P.(C) 200/2021 & CM APPL. 551/2021,
W.P.(C) 201/2021 & CM APPL. 552/2021,
W.P.(C) 202/2021 & CM APPL. 553/2021,
W.P.(C) 203/2021 & CM APPL. 554/2021,
W.P.(C) 204/2021 & CM APPL. 555/2021,
W.P.(C) 206/2021 & CM APPL. 559/2021,
W.P.(C) 212/2021 & CM APPL. 568/2021,
W.P.(C) 213/2021 & CM APPL. 569/2021,
W.P.(C) 215/2021 & CM APPL. 572/2021,



W.P.(C) 217/2021 & CM APPL. 574/2021,
W.P.(C) 218/2021 & CM APPL. 576/2021,
W.P.(C) 219/2021 & CM APPL. 579/2021,
W.P.(C) 229/2021 & CM APPL. 610/2021,
W.P.(C) 230/2021 & CM APPL. 620/2021,
W.P.(C) 231/2021 & CM APPL. 621/2021,
W.P.(C) 232/2021 & CM APPL. 622/2021,
W.P.(C) 233/2021 & CM APPL. 623/2021,
W.P.(C) 234/2021 & CM APPL. 625/2021,
W.P.(C) 235/2021 & CM APPL. 627/2021,
W.P.(C) 236/2021 & CM APPL. 629/2021,
W.P.(C) 237/2021, W.P.(C) 239/2021, W.P.(C) 240/2021,
W.P.(C) 241/2021, W.P.(C) 242/2021, W.P.(C) 244/2021,
W.P.(C) 245/2021, W.P.(C) 250/2021 & CM APPL. 645/2021,
W.P.(C) 251/2021, W.P.(C) 252/2021, W.P.(C) 253/2021,
W.P.(C) 254/2021, W.P.(C) 255/2021, W.P.(C) 256/2021,
W.P.(C) 257/2021, W.P.(C) 259/2021,
W.P.(C) 260/2021 & CM APPL. 649/2021,
W.P.(C) 262/2021, W.P.(C) 264/2021 & CM APPL. 651/2021,
W.P.(C) 265/2021, W.P.(C) 269/2021,
W.P.(C) 270/2021 & CM APPL. 667/2021,
W.P.(C) 271/2021 & CM APPL. 674/2021,
W.P.(C) 274/2021, W.P.(C) 279/2021, W.P.(C) 280/2021,
W.P.(C) 282/2021, W.P.(C) 283/2021,
W.P.(C) 284/2021 & CM APPL. 724/2021,
W.P.(C) 288/2021, W.P.(C) 314/2021, W.P.(C) 321/2021,
W.P.(C) 6643/2020 & CM APPLs. 23138-40/2020,
W.P.(C) 10972/2019 & CM APPL. 2369/2021,
W.P.(C) 12348/2019 & CM APPLs. 27116/2020, 2316/2021,
W.P.(C) 12957/2019 & CM APPL. 18219/2020,
W.P.(C) 13293/2019 & CM APPL. 18210/2020,
W.P.(C) 13307/2019 & CM APPLs. 28148/2020, 1919/2021,
W.P.(C) 13319/2019 & CM APPL. 18213/2020,
W.P.(C) 13440/2019 & CM APPLs. 18225/2020, 25303-
25304/2020,
W.P.(C) 13442/2019 & CM APPLs. 18318/2020, 25378-
25379/2020,
W.P.(C) 13659/2019 & CM APPLs. 19848-19849/2020,



W.P.(C) 13834/2019, W.P.(C) 13924/2019,
W.P.(C) 13963/2019 & CM APPLs. 55847/2019, 23627/2020,
W.P.(C) 6795/2020, W.P.(C) 7331/2020 & CM APPLs. 24645-
47/2020.

Appearances:-

For the Petitioners:-

Mr. Sanjay Sharawat, Advocate.
Mr. R.K. Ruhil and Mr. Sumit Bishnoi, Advocates.
Mr. Mayank Manish and Mr. Ravi Kant, Advocates.
Mr. Abhishek Singh and Ms. Madavaram Priyanka, Advocates.
Mr. Shivam Singh, Advocate with Mr. Sahil Raveen, Mr. Jaideep Khanna, Mr. Vidur Dwivedi, Mr. Harpreet Singh Gupta and Mr. Harsh Choudhary, Advocates.
Mr. Chandrashekhar Singh, Advocate.
Mr. Amitesh Kumar, Ms. Priti Kumari and Ms. Binisa Mohanty, Advocates.
Mr. Laksh Khanna, Mr. Mehul M. Gupta and Ms. Smriti Maheshwari, Advocates.

For the Respondents:-

Mr. Maninder Singh, Senior Advocate with Mr. Zoheb Hossain, Mr. Prabhas Bajaj, Mr. Vivek Gurnani and Mr. Piyush Goyal, Advocates for Pharmacy Council of India.
Mr. Ram Niwas Buri & Mr. Rishabh Sharma, Advocates for impleaded R3 in W.P.(C) 10972/2019 & W.P.(C) 12348/2019.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. This batch of 88 writ petitions is directed against communications dated 17.07.2019 and 09.09.2019 addressed by the



respondent/ Pharmacy Council of India [hereinafter, “PCI”] to State Governments and Union Territory Administrations.¹ By the impugned letter dated 17.07.2019, the PCI communicated a decision taken at its meeting held on 09/10.04.2019 to impose a moratorium on the opening of new pharmacy colleges for a period of five years with effect from the academic year 2020-21. The letter dated 09.09.2019 conveyed the resolution taken at the meeting held on 05/06.08.2019, providing certain exemptions to the aforesaid moratorium.

Facts

2. The writ petitions proceed on a substantially similar factual basis. The petitioners claim to be desirous of establishing pharmacy colleges, for which they require prior approval of the PCI. It is stated that the petitioners procured land and physical infrastructure required prior to submission of their applications. In the normal course, they would have been required to submit applications for establishment of colleges in the year 2020-21 in October/ November of the preceding year. However, their applications could not be submitted due to the impugned decision of the PCI.

3. In the present batch of petitions, the extent of investment in land and infrastructure has not been clearly elaborated, except for a statement in one of the writ petitions² to the effect that the petitioner’s investment amounts to ₹2.5 crores, including a building of approximately 15,000 sq. ft.

¹ The same communications have also been challenged in approximately 2500 other writ petitions, in which orders will be passed separately.

² W.P.(C) 10972/2019



Impugned communications of the PCI

4. Before adverting to the contentions of the parties, it is necessary to appreciate the scope and effect of the impugned communications. In the letter dated 17.07.2019, the PCI noted that establishment of six different courses of varying durations were being approved by it under Section 12 of the Pharmacy Act, 1948 [hereinafter, “the Act”], and thereafter adverted to the decision taken in the meeting of 09/10.04.2019, to place a moratorium on establishment of new pharmacy colleges. The relevant extracts of the communication dated 17.07.2019 read as follows:-

“ xxxx xxxx xxxx

*During the 106th Central Council meeting of the PCI held on 9th & 10th April, 2019, **a concern was expressed about the mushrooming of pharmacy colleges in the country.** The issue was threadbarely deliberated. It was noted that-*

a) There are approximately 1,985 D.Pharm and 1,439 B.Pharm institutes in the country. The annual intake of students in these institutes (both D.Pharm and B.Pharm) is 2,19,279.

b) This available workforce is enough to meet the current pharmacist-to-population needs of the country.

c) The rapid increase in the number of pharmacy colleges over the last decade may result in shortage of trained and qualified teaching faculty which may affect the quality of education imparted to students.

***d) The pass out students are not getting reasonably paid job opportunities** in public as well as in private sector.*

Considering the above facts, the House passed the following resolution unanimously:-



RESOLUTION

*“Taking into consideration the availability of sufficient qualified pharmacist work force, **the House unanimously resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-2021. This moratorium shall not be applicable in the North Eastern region of the country** where there is a shortage of pharmacy colleges.”*

The said Resolution has been communicated to Ministry of Health and Family Welfare, Government of India on 17.7.2019 for information under intimation to All India Council for Technical Education (AICTE) and also posted on the Council's website.”³

5. The communication dated 09.09.2019 was stated to be in continuation of the earlier communication dated 17.07.2019, and pursuant to representations received by the PCI for clarification of the moratorium imposed. It granted certain exemptions from the moratorium. The PCI, in the communication dated 09.09.2019, stated as follows:-

“ xxxx xxxx xxxx

The matter was placed before the 107th Central Council in its meeting held on the 5th & 6th August, 2019 which noted that the spirit of the moratorium is to ensure-

- *quality assurance in pharmacy education.*
- *availability of job opportunities to already available pharmacist workforce which is enough to meet the current pharmacist-to-population needs of the country as there are approximately 1,985 D.Pharm and 1,439 B.Pharm institutes in the country with an annual intake of more than 2.19 lakhs,*

³ Emphasis supplied.



- *that there is no shortage of qualified faculty.*

It was unanimously decided that moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-2021 will be subject to following conditions -

- a) The moratorium will *not* apply to the Government institutions.**
- b) The moratorium will *not* apply to the institutions in North Eastern region.**
- c) The moratorium will *not* apply to the States / Union Territories where the number of D.Pharm and B.Pharm institutions (both combined) is less than 50.**
- d) The institutions which had applied for opening D.Pharm and/or B.Pharm colleges for 2019-20 academic session either to the PCI or to the AICTE and the proposal was rejected or not inspected due to some reason or the other will be allowed to apply for 2020-21 academic session and this relaxation is given only for one year i.e. for 2020-21 academic session only.*
- e) Existing approved pharmacy institutions will be allowed to apply for increase in intake capacity as per PCI norms and/or to start additional pharmacy course(s). ”⁴**

6. The objectives of the moratorium, as stated in these decisions, was to ensure that the pharmacists-to-population ratio in the country does not exceed a level where job opportunities are not available to trained pharmacists, to ensure the maintenance of quality education in the field and to prevent a shortage of qualified faculty consequent upon increase in the number of colleges. It is with these objectives in mind that the moratorium was imposed, however, with certain

⁴ Emphasis supplied.



exemptions, as enumerated in the communication dated 09.09.2019, extracted above.

Relevant provisions of the Pharmacy Act, 1948

7. The relevant sections of the Act are set out below:-

“THE PHARMACY ACT, 1948

xxxx xxxx xxxx

An Act to regulate the profession of pharmacy.

WHEREAS it is expedient to make better provision for the regulation of the profession and practice of pharmacy and for that purpose to constitute Pharmacy Councils;

xxxx xxxx xxxx

3. Constitution and composition of Central Council.—*The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely:-*

(a) six members, among whom there shall be at least one teacher of each of the subjects, pharmaceutical chemistry, pharmacy, pharmacology and pharmacognosy elected by the University Grants Commission from among persons on the teaching staff of an Indian University or a College affiliated thereto which grants a degree or diploma in pharmacy;

(b) six members, of whom at least four shall be person possessing a degree or diploma in, and practising pharmacy or pharmaceutical chemistry, nominated by the Central Government;

(c) one member elected from amongst themselves by the members of the Medical Council of India;

(d) the Director General, Health Services, ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;



(dd) *The Drugs Controller, India, ex officio or if he is unable to attend any meeting, a person authorised by him writing to do so;*

(e) *the Director of the Central Drugs Laboratory, ex officio;*

(f) *a representative of the University Grants Commission and a representative of the All India Council for Technical Education;*

(g) *one member to represent each State elected from amongst themselves by the members of each State Council, who shall be a registered pharmacist;*

(h) *one member to represent each State nominated by the State Government, who shall be a registered pharmacist.*

Provided that for five years from the date on which the Pharmacy (Amendment) Act, 1976 (70 of 1976), comes into force the Government of each Union territory shall, instead of electing a member under clause (g), nominate one member, being a person eligible for registration under section 31, to represent that territory.

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10. Education Regulations.— (1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe-

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;



- (d) any other conditions of admission to examinations.
- (3) Copies of the draft of the Education Regulations and of all Subsequent amendments thereof shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under sub-section (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.
- (4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct.
- (5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit.

11. Application of Education Regulations to States.—
At any time after the constitution of the State Council under Chapter III and after consultation with the State Council, the State Government may, by notification in the Official Gazette, declare that the Education Regulations shall take effect in the State:

Provided that where no such declaration has been made, the Education Regulations shall take effect in the State on the expiry of three years from the date of the constitution of the State Council.

12. Approved course of study and examinations.— (1)
Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of



study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the States which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination.

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18. Power to make regulations.— (1) The Central Council may, with the approval of the Central Government, by notification in the Official Gazette, make regulations consist with this Act to carry out the purposes of this Chapter.

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(4) Every regulation made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both the Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so,



however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”⁵

8. In exercise of the power conferred under Section 10 of the Act, the PCI has made the PCI Education Regulations, 1991. The said Regulations contain detailed provisions regarding the qualification of pharmacists, the various approved courses of study, etc. The contents of the said Regulations are, however, not relevant for the adjudication of the present dispute.

Summary of submissions of learned counsel for the parties

9. Mr. Sanjay Sharawat, learned counsel appearing for the petitioners in several of these writ petitions, led the arguments on behalf of the petitioners. His arguments were supplemented by Mr. Shivam Singh, learned counsel appearing for the petitioners in W.P.(C) 252/2021 and other petitions. Other learned counsel for the petitioners adopted Mr. Sharawat’s submissions. Mr. Maninder Singh, learned Senior Counsel, and Mr. Zoheb Hossain, learned counsel, made submissions on behalf of the PCI.

10. Learned counsel for the parties have referred to the voluminous record and have also cited various judgments in support of their contentions. The propositions advanced on each side are summarised here, and will be elaborated, with reference to the necessary documents and authorities, later in this judgment.⁶

⁵ Emphasis supplied.

⁶ Although several judgments on each point have been placed in compilations filed by learned counsel for the parties, it was made clear during the course of hearing that, only those authorities cited during oral arguments would be considered.



11. The arguments of the petitioners can be summarized under the following heads:-

- a) The right to establish an educational institution is a fundamental right guaranteed by Article 19(1)(g) of the Constitution of India.
- b) Such a right cannot be abridged or abrogated, except in compliance with Article 19(6) of the Constitution.
- c) The impugned decisions of the PCI are, at best, in the nature of an executive action, and do not constitute 'law' within the meaning of Article 19(6) read with Article 13 of the Constitution.
- d) The impugned communications, being policy decisions of the PCI, are *ultra vires* the statutory powers of the PCI and cannot be traced to any authority conferred upon it by statute.
- e) The basis upon which the PCI has come to the conclusion that a moratorium is required is unsupported by any reasonable factual foundation.
- f) The impugned decisions do not satisfy the tests of reasonableness and proportionality, which must attach to any decision of state authorities, more particularly, one which concerns the exercise of citizens' fundamental rights.
- g) The exemptions provided in the impugned decisions fail the constitutional test of classification, as they are based neither upon intelligible differentia, nor bear any rational nexus with the avowed objective of the decision.
- h) A judgment of a learned Single Judge of the Karnataka High Court in *Shifa College of Pharmacy & Anr. vs. Pharmacy*



*Council of India & Ors.*⁷ was also placed, whereby the learned Single Judge has quashed the impugned communications of the PCI dated 17.07.2019 and 09.09.2019. CM APPL. No. 41337/2021 was filed by the petitioner in W.P.(C) 175/2021, after judgment was reserved, to place on record the judgment of a Division Bench of the Karnataka High Court dated 09.11.2021 in W.A. No. 746/2020⁸ by which the appeal of the PCI against the aforesaid judgment was dismissed. Against the view taken by the Karnataka High Court, PCI has filed Special Leave Petition (C) No. 19671/2021, in which the Supreme Court issued notice on 17.12.2021.

12. The arguments of the PCI were on the following lines:-
- a) The petitioners have not made out any factual basis for the reliefs sought.
 - b) The moratorium is referable to the power of the PCI to “regulate” the pharmacy sector, which is conferred by the Act, and therefore constitutes “law” within the meaning of Article 13 of the Constitution.
 - c) The impugned moratorium is not a prohibition, but in the nature of a temporary suspension, which is contemplated within the power to regulate.
 - d) The primacy of the PCI in regulation of pharmacy has been established by the judgment of the Supreme Court in *Pharmacy*

⁷ Judgment dated 19.11.2020 in W.P.(C) 52314/2019 and connected matters.

⁸ Pharmacy Council of India vs. Rajeev College of Pharmacy & Ors.



*Council of India vs. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy & Ors.*⁹.

- e) In a statutory scheme, where an expert regulator has been established, particularly one dealing with human health, the views of the regulator are determinative, even when power vests in the Union of India [hereinafter, “the UoI”].
- f) The decisions of the PCI have been duly communicated to the UoI as well as to all State Governments, and no objections have been raised thereto. In fact, the composition of the PCI itself includes representatives of all relevant authorities, including the UoI and State Governments.
- g) The moratorium is supported by ample empirical data, which has been considered by the expert regulator, and has not been challenged. It has been imposed keeping in mind the statutory obligation of the PCI to ensure minimum standards.
- h) Each of the exemptions notified in the communication dated 09.09.2019 is based upon a reasonable classification which bears a nexus with the objectives of the PCI.
- i) The PCI is undertaking a regular review of the moratorium, and is duty-bound to make such adjustments from time to time as it considers necessary.

Litigation history

13. During the pendency of some of these writ petitions, interim orders were passed with regard to the petitioners’ applications for

⁹ (2021) 10 SCC 657



approval. In several other petitions, no *ad interim* orders were passed. The matters were taken to the Division Bench, which disposed of the appeals by a judgment dated 22.12.2020¹⁰. In the appeals before the Division Bench, the petitioners/appellants had been granted permission to file their applications for approval with the PCI, but no final decision was to be rendered. In the meantime, the petitioners sought further direction for the PCI to take a final decision and to grant approval for admitting students in the academic session 2020-21. The decision of the learned Single Judge to decline such relief was affirmed by the Division Bench. However, the Division Bench directed expeditious hearing of the writ petitions and appropriate moulding of interim relief.

14. Although the hearing of the writ petitions commenced in January, 2021, unfortunately, they could not be disposed of within the desired time, owing to some delays due to the COVID-19 pandemic and the heavy board of the Court.

15. In the meanwhile, the petitioners filed CM APPL. No. 16660/2021 and CM APPL. No. 41337/2021 for certain directions in respect of admissions for the years 2021-22 and 2022-23 respectively. Those applications were disposed of by orders dated 24.05.2021 and 23.12.2021 respectively. In the order dated 24.05.2021, it was observed that appropriate reliefs would be considered at the stage of disposal of the petitions, rather than by way of an interim order. Further interim relief was also declined by the order dated 23.12.2021.

¹⁰ In LPA 317/2020 (Jagannath Institute of Pharmacy vs. Pharmacy Council of India & Anr.) and connected matters.



It may be noted that the petitioners also placed on record an order dated 09.12.2021 passed by the Chhattisgarh High Court in W.P. (C) 3766/2021¹¹ wherein the Division Bench decision of the Karnataka High Court dated 09.11.2021 has been relied upon to permit the petitioner therein to submit the application for admission for academic year 2022-23.¹²

16. During the pendency of the petition, the PCI has also conducted a review of the moratorium, and an additional affidavit has been placed before the Court alongwith a report of a sub-committee constituted for the purpose.

Analysis

A. Requirement of framing Regulations – the decision in Krupanidhi

17. At the very outset, it may be noted that by the impugned decision dated 17.07.2019, the PCI has placed an embargo “*on the opening of new pharmacy colleges for running diploma as well as degree courses in pharmacy*” for a period of five years. The resolution of the PCI is thus, directed against the establishment of new pharmacy colleges for the reasons enumerated in the resolution. The second impugned communication, dated 09.09.2019, makes the moratorium subject to various exemptions.

¹¹ Chouksey College of Pharmacy & Anr. vs. Pharmacy Council of India & Ors.

¹² It had been submitted on behalf of the PCI that a Special Leave Petition had been filed against the order dated 09.12.2021. During the course of preparation of this judgment, I find that by an order dated 07.02.2022 in Special Leave Petition (Civil) No. 1050/2022 [*Pharmacy Council of India vs. Chouksey College of Pharmacy & Ors.*], the Supreme Court has stayed the operation of the order of the Chhattisgarh High Court dated 09.12.2021.



18. It is in this context that the legality of the actions of the PCI must be considered, bearing in mind that the decision is by way of an executive act, and not by way of a statutory provision or the formulation of any Regulations under Sections 10 or 18 of the Act.

19. A Division Bench of this Court in *Krupanidhi Education Trust (Regd.) And Anr. vs. The Secretary, Pharmacy Council of India and Ors.*¹³ had occasion to consider the powers of the PCI to make a policy decision, as opposed to framing Regulations under Section 10 of the Act. The PCI had decided to disallow any increase in the number of seats in a pharmacy college, by way of a general policy decision dated 12.12.1989. The petitioner-institution, which had permission to conduct its course with an intake of 60 students, had applied to increase the strength to 120 students. The PCI rejected the request on the basis of its “policy decision”.

20. The Division Bench noted the provisions of Sections 10 and 12 of the Act, as well as the Education Regulations, 1981 and came to the conclusion that such a policy decision would have to form part of the Education Regulations, with compliance of the requirements of Section 10 of the Act. Therefore, even while rejecting the petitioner’s contention that the PCI has no power to prescribe the number of seats in an approved course, the Division Bench held as follows:-

“10. Mr. Tewari, learned counsel for the respondents said that in view of this letter now at this point of time no seat can be increased by the petitioner. This letter has been assailed by the petitioner on the ground that it is arbitrary in nature and is beyond the power of the

¹³ AIR 1992 Delhi 238



Central Council and further that no approval of this policy decision was accorded by the Central Government and this was also not notified in the Official Gazette. In the return nothing has been said by the respondents to all these contentions of the petitioner except to say that the averments were wrong and baseless. We feel the petitioner has raised very valid points. For the time being we are not going into the question if the Central Council can take such a policy decision. The fact remains that there is no approval of any such policy decision by the Central Government which is requirement of section 10 of the Act. In our view, this policy decision will form part of the Education Regulations and for that purpose necessary formalities have to be gone into. A point was also raised by Mr. Nagpal that Central Council has no power to accord or not to accord approval regarding the increase in number of seats. This arguments we are unable to accept. We find that Central Council, which is Pharmacy Council of India, has full power to prescribe not only the courses but to see that the education is properly imparted and all the infrastructure like the buildings, staff, equipment, library, etc. are available to the students who undergo the courses of study and then take the examination. Powers of the Council cannot be circumscribed. The Act and the Education Regulations fully empower the Central Council, i.e., the Pharmacy Council of India, to prescribe course of study for the purpose of admission to an approved examination for pharmacists and then to oversee the working of the authority conducting the approved course of study for pharmacists and also holding examination for them. Approval to an authority for conducting the course of study and to an authority for conducting examination can be granted by the Pharmacy Council of India only if the authority conducts itself in conformity with the Education Regulations. The Pharmacy Council of India has power to restrict the number of seats for admission to an approved course of



pharmacy so long the conditions prescribed in Appendix-B of the Regulations are not fulfilled. At the same time, the Regulations do not authorise the Pharmacy Council of India to ban altogether the increase in number of seats if the authority under section 12(1) of the Act fulfils all the conditions laid by the Act and the Education Regulations.

11. We are, therefore, of the opinion that while the Pharmacy Council of India has power to accord or not to accord its approval to the increase in number of seats, but it cannot act on its policy decision referred to above and communicated by letter dated 12 December 1989. Since nothing has been said in the return for the basis of such a decision which would also appear to be outside the Education Regulations and is without the approval of the Central Government and has not been promulgated in accordance with section 10 of the Act, it suffers from the vice of arbitrariness. That policy decision has, therefore, to be quashed. This bar having been removed, the petitioner will be entitled to increase in the number of seats subject to, however, that necessary staff is appointed as per the inspection report given under section 16 of the Act. Accordingly, this writ petition is allowed. Rule is made absolute. On the petitioner communicating to the Pharmacy Council of India of the recruitment of the necessary staff and complying with other conditions of the inspection report, the Pharmacy Council of India shall accord its approval within sixty days thereof keeping in view the academic session. In the circumstances, there will be no order as to costs.”¹⁴

21. I am of the view that the aforesaid judgment, inasmuch as it holds that the PCI cannot control increase in the number of seats by way of an executive decision *de hors* the Education Regulations,

¹⁴ Emphasis supplied.



would apply *a fortiori* to the impugned communication, whereby an absolute embargo has been placed upon the establishment of new colleges/courses.

22. Mr. Singh distinguished the judgment of this Court in *Krupanidhi*¹⁵ on the ground that the policy decision of the PCI in that case was not approved by the UoI. He referred to the communications exchanged between the PCI and UoI in the present case to argue that the decision of the PCI has, in fact, been approved by the UoI. In support of this contention, Mr. Singh submitted that the Division Bench of this Court in *Dr. N. K. Garg & Ors. vs. I.I.T. Delhi & Ors.*¹⁶ has held that the exercise of power by a statutory authority, of which the UoI is fully aware, is sufficient to vest the decision with the authority of the UoI itself. According to Mr. Singh, once the decision is taken and approved, it in fact partakes the character of subordinate legislation, the emphasis being on substance and not on form. Mr. Singh emphasised that the Division Bench in *Krupanidhi* expressly held that it was not going into the question whether the PCI could take a policy decision at all. In the alternative, Mr. Singh submitted that the decision in *Krupanidhi* is no longer good law, in view of the decision of the Supreme Court in *J.N. Medical College, Belgaum vs. Medical Council of India & Ors.*¹⁷.

23. I am unable to agree with the aforesaid contentions of Mr. Singh. Taking the last contention first, the decision of the Supreme

¹⁵ Supra (note 13)

¹⁶ 1995 SCC OnLine Del 626 : (1995) 35 DRJ 218 : (1995) 60 DLT 214 (DB)

¹⁷ (2010) 15 SCC 801



Court in *J.N. Medical College, Belgaum*¹⁸ was concerned with a challenge to a decision of the Medical Council of India [hereinafter, “MCI”] to permit the appellant therein to increase its intake capacity to 150, instead of 200 as sought by it. Section 10-A of the MCI Act, 1956¹⁹ was considered by the Court to vest the MCI with the power to regulate the admission capacity of the college. A similar power – whether relating to admission capacity or the imposition of a moratorium – is not found in the Act for the field of pharmacy. Consequently, the decision in *Krupanidhi*²⁰ correlating such power, if at all, to the Regulations framed under Section 10 of the Act, cannot be held to be impliedly overruled by the decision in *J.N. Medical College, Belgaum*.

24. With regard to Mr. Singh’s submission that *Krupanidhi*²¹ turns upon the non-approval of the policy decision in that case by the UoI, I find that *Krupanidhi* adverts to the question of approval by UoI because it is one of the requirements of Section 10 of the Act. It is in this context that the Court laid emphasis upon the fact that the decision had not been approved by the UoI. In the present case, even if the impugned decision of the PCI is held to be approved by the UoI as required by Section 10(1) of the Act, the requirements of Section 10(3) [inviting comments of State Governments], Section 10(4) [publication in the Official Gazette] and Section 18(4) [laying of the Regulations before Parliament] have admittedly not been fulfilled. The

¹⁸ Supra (note 17)

¹⁹ Introduced by way of The Indian Medical Council (Amendment) Act, 1993.

²⁰ Supra (note 13)

²¹ Supra (note 13)



Division Bench in *Krupanidhi* has specifically held that the policy decision in question would have to form part of the Education Regulations, and necessary compliance with the requirements of Section 10 of the Act is therefore required in the present case also.

25. Mr. Singh also relied upon a judgment of the Division Bench of the Bombay High Court (Aurangabad Bench) in *Sayali Charitable Trust's College of Pharmacy vs. Pharmacy Council of India*²². The Bombay High Court was considering a challenge to fixation of the intake capacity in Diploma of Pharmacy courses by a decision of the PCI. The Court has referred to justifications analogous to those advanced in the present case²³, and also to the moratorium, which is the subject matter of the present petitions. The Bombay High Court, however, dismissed the writ petitions on the basis that the policy decision of the PCI to fix the number of seats cannot be interfered with.²⁴ It may be mentioned that although the judgment of the Division Bench in *Krupanidhi*²⁵ was cited before the Bombay High Court, it has not been adverted to in the discussion. It appears to me that the view taken by the Bombay High Court is, in fact, at variance with the ratio of *Krupanidhi*. *Krupanidhi*, being a Division Bench judgment of this Court, is binding upon me. I am therefore respectfully unable to follow the view taken in *Sayali Charitable Trust's College of Pharmacy*.

²² W.P.(C) 4919/2020 and connected matters, decided on 06.11.2020.

²³ Ibid., paragraph 9

²⁴ Ibid., paragraphs 16 to 18

²⁵ Supra (note 13)



26. A statutory body must trace the source of its power to a statutory provision. It has no general or inherent powers which enable it to exercise plenary jurisdiction. This position is made clear by the judgments of the Supreme Court in *Shrimati Hira Devi & Ors. vs. District Board, Shahjahanpur*²⁶ and *Ramchandra Keshav Adke (Dead) by LRs & Ors. vs. Govind Joti Chavare & Ors*²⁷.

27. In *Ramchandra Keshav Adke*²⁸, the Supreme Court cited the rule in *Taylor vs. Taylor*²⁹ and observed that where a power is given to do a thing in a particular manner, it must be done in that manner or not at all. In addition to his reliance upon *Krupanidhi*³⁰, Mr. Sharawat relied upon this proposition to argue that, even in the event the PCI is held to be vested with the power to restrict the establishment of educational institutions altogether, that power must be exercised only by framing Regulations under Section 10 of the Act. A clear enunciation of this principle is found in *Chief Settlement Commissioner, Punjab & Ors. vs. Om Parkash & Ors.*³¹. The aforesaid judgment was also relied upon by the Division Bench of this Court in *Birla Higher Secondary School vs. Lt. Governor Delhi & Ors.*³² wherein the Court held that, notwithstanding the wide powers vested in the Director of Education under the Delhi Education Code,

²⁶ (1952) SCR 1122, at 1130

²⁷ (1975) 1 SCC 559, paragraph 25

²⁸ Supra (note 27)

²⁹ (1876) 1 Ch D 426, followed by the Privy Council in *Nazir Ahmad vs. The King-Emperor* AIR 1936 PC 253 : LR 63 IA 372 and the Supreme Court in several later judgments.

³⁰ Supra (note 13)

³¹ (1968) 3 SCR 655, at 660-661

³² ILR (1973) 1 Del 634 : 1972 SCC OnLine Del 291 (C.W. No. 562/1972, decided on 08.12.1972)



1965, the Director was not empowered to direct reinstatement of a teacher in a particular school.

28. Particularly in cases where restrictions on fundamental rights are sought to be imposed, the statutory mandate must be clear. I do not find any clear power to be conferred by the Act upon the PCI to impose the moratorium by way of a policy decision, unsupported by any authority under the Education Regulations.

B. Restriction on a fundamental right under Article 19(1)(g)

29. Further, the right to establish an educational institution has been held by the Supreme Court to be a fundamental right under Article 19(1)(g) of the Constitution. The 11-Judge Bench in *T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors.*³³ clearly holds to this effect. The same view has been taken in the subsequent decisions in *Islamic Academy of Education & Anr. vs. State of Karnataka & Ors.*³⁴ and *P.A Inamdar & Ors. vs. State of Maharashtra & Ors.*³⁵. Quite apart from the issue with regard to Section 10 of the Act, therefore, a further question arises as to whether an executive action can impose a moratorium on the very establishment of institutions.

30. In *Modern School vs. Union of India & Ors.*³⁶, the Supreme Court held that any control or regulation over education or educational institutions must be imposed only by a legislative act, and not by executive instructions. This follows from the provisions of Article 19(6) of the Constitution, which permits reasonable restrictions on the

³³ (2002) 8 SCC 481, paragraphs 18 to 25 of the judgment of six learned Judges, per Kirpal CJ.

³⁴ (2003) 6 SCC 697, paragraph 120

³⁵ (2005) 6 SCC 537, paragraph 92

³⁶ (2004) 5 SCC 583, paragraph 41



exercise of Article 19(1)(g) rights by virtue of “any law” made by the State relating to the matters described therein. This position was further elaborated, also in the context of establishment and management of educational institutions, in *State of Bihar & Ors. vs. Project Uchcha Vidya, Sikshak Sangh & Ors.*³⁷ which held as follows:-

“69. The right to manage an institution is also a right to property. In view of a decision of an eleven-Judge Bench of this Court in T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481] establishment and management of an educational institution has been held to be a part of fundamental right being a right of occupation as envisaged under Article 19(1)(g) of the Constitution. A citizen cannot be deprived of the said right except in accordance with law. The requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. Such a law, it is trite, must be one enacted by the legislature.”³⁸

31. This position has also been considered by a coordinate bench of this Court in *Forum for Promotion of Quality Education for All, Action Committee, Unaided Recognized Private Schools vs. Lt. Governor of Delhi & Ors.*³⁹ where the Court has held as follows:-

“65. It is an equally well settled proposition of law that no citizen can be deprived of his fundamental right guaranteed under Article 19(1) of the Constitution in pursuance to an executive action without any authority

³⁷ (2006) 2 SCC 545

³⁸ Emphasis supplied.

³⁹ 216 (2015) DLT 80



of law. If any executive action operates to the prejudice of any person, it must be supported by legislative authority, i.e., a specific statutory provision or rule of law must authorise such an action. Executive instruction in the form of an administrative order unsupported by any statutory provision is not a justifiable restriction on fundamental rights.

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70. Consequently, this Court is of the opinion that Article 19(6) of the Constitution postulates and contemplates restriction on a fundamental right by way of a law and not by an administrative action in the form of an order or a circular or a notification without any authority of law.”⁴⁰

32. Mr. Singh did not dispute the applicability of the aforesaid propositions, but contended that the PCI is clothed with power under the Act to impose the impugned moratorium. He submitted in this context that the preamble of the Act provides for “*regulation of the profession and practice of pharmacy*”, and traced the power to institute a moratorium to the aforesaid objective of “*regulation*”, which can be exercised by means of a policy decision.⁴¹

33. Mr. Sharawat, on the other hand, cited the decision of the Supreme Court in *Laurel Energetics Private Ltd. vs. Securities and Exchange Board of India*⁴² to argue that the objectives of the legislation, as enumerated in Statement of Objects and Reasons, cannot control the meaning assigned to its substantive provisions,

⁴⁰ Emphasis supplied.

⁴¹ Whether or not the impugned decisions of the PCI can be justified on the basis of a power conferred upon UoI is dealt with later in this judgment.

⁴² (2017) 8 SCC 541 [paragraphs 24 and 25]



although they may be used as an aid to interpretation in cases of ambiguity.

34. The Statement of Objects and Reasons of the Act is reproduced below:-

“STATEMENT OF OBJECTS AND REASONS

It is desirable that, as in most other countries, only persons who have attained a minimum standard of professional education should be permitted to practise the Profession of Pharmacy. It is accordingly proposed to establish a Central Council of Pharmacy, which will prescribe the minimum standards of education and approve courses of study and examinations for Pharmacists, and Provincial Pharmacy Councils, which will be responsible for the maintenance of provincial registers of qualified pharmacists. It is further proposed to empower Provincial Governments to prohibit the dispensing of medicine on the prescription of a medical practitioner otherwise than by, or under the direct and personal supervision of, a registered pharmacist.”

35. I am unable to agree with Mr. Singh that the PCI can claim the authority to issue the impugned communications based upon the Statement of Objects and Reasons, or the Preamble to the Act. Such a reading would clothe the PCI with a general power to regulate the profession, and the establishment of educational institutions, unlimited by the substantive provisions of the statute.

36. The Statement of Objects and Reasons extracted above also does not indicate the width of power which the PCI claims and in any event, cannot control the meaning of clear substantive provisions, such as Sections 10 and 18 of the Act, which confer regulation making power upon the PCI.



37. In the case of the preamble to the statute, which uses the word “*regulate*”, the position is similar. The preamble cannot be interpreted to read such a power into the Act, but only to aid in the resolution of any ambiguity in construction. Reference may be made in this connection to the judgments of the Supreme Court in *Tribhuban Parkash Nayyar vs. Union of India*⁴³, *Union of India vs. Elphinstone Spinning and Weaving Co. Ltd. & Ors.*⁴⁴ and *Maharishi Mahesh Yogi Vedic Vishwavidyalaya vs. State of Madhya Pradesh & Ors.*⁴⁵.

C. Are the impugned communications justified on the basis of approval by the UoI?

38. Mr. Singh further submitted that the facts of this case, showing the approval of the decisions of the PCI by the UoI rendered the decisions, for all practical purposes, those of the UoI. He argued, relying upon the decision in *Dr. N. K. Garg*⁴⁶ that exercise of a power vested in the UoI by the PCI is sufficient; so long as the UoI had knowledge of the decision taken by the PCI, this would tantamount to ratification of the same. Mr. Singh submitted that the impugned communications would come within the executive authority of the UoI, co-extensive with its legislative competence under Article 73 of the Constitution. For this purpose, he referred to the correspondence between the PCI and the UoI dated 26.09.2019 and 05.03.2021 to demonstrate that the UoI, apart from being represented in the composition of the PCI, was also kept informed of the decisions made

⁴³ (1969) 3 SCC 99, paragraph 6

⁴⁴ (2001) 4 SCC 139 at 164, paragraph 17

⁴⁵ (2013) 15 SCC 677, paragraphs 87 to 88

⁴⁶ *Supra* (note 16)



and accepted the same. Mr. Singh relied upon the decision of the Supreme Court in *Rai Sahib Ram Jawaya Kapur & Ors. vs. The State of Punjab*⁴⁷ to submit that the executive power of the government must be read in the same amplitude as its legislative powers.

39. While the above proposition is unexceptionable, the Court in *Ram Jawaya Kapur*⁴⁸ was not concerned with a case of an alleged infringement of fundamental rights. That an encroachment upon private rights would require a specific legislation to be adopted is, in fact, expressly acknowledged in *Ram Jawaya Kapur*⁴⁹. The observations of the Court also make it clear that the assertion of fundamental rights by the petitioners in that case was rejected by the Supreme Court.⁵⁰

40. The matter was considered in this perspective in *Project Uchcha Vidya*⁵¹. The Supreme Court clarified, relying upon the judgment in *State of Madhya Pradesh & Anr. vs. Thakur Bhagat Singh*⁵², that executive action which was not supported by legislation did not operate to the prejudice of any citizen. In the present case, as the petitioners' fundamental rights under Article 19(1)(g) are implicated by the impugned decisions, Mr. Singh's argument cannot be accepted.

⁴⁷ (1955) 2 SCR 225 : AIR 1955 SC 549

⁴⁸ Supra (note 47)

⁴⁹ Ibid., paragraph 17

⁵⁰ Ibid., paragraphs 19 to 21

⁵¹ Supra (note 37) [paragraph 71]

⁵² (1967) 2 SCR 454 : AIR 1967 SC 1170



D. Whether the wide powers of the PCI must include power to regulate widespread “mushrooming” of pharmacy colleges?

41. Mr. Singh next submitted that the actions of the PCI were motivated by its responsibility to regulate the standard of education and the conduct of the profession. He drew my attention to the concern expressed by the Supreme Court with regard to the “mushrooming” of educational institutions and the concomitant responsibilities of regulatory bodies to ensure that requisite standards are maintained, both in the educational institutions and in the practice of the profession (See: *J.N. Medical College, Belgaum*⁵³ and *Jawaharlal Nehru Technological University Registrar vs. Sangam Laxmi Bai Vidyapeet and Ors.*⁵⁴). Mr. Singh referred to the composition of the PCI under Section 3 of the Act, which contemplates representation of teachers and practicing pharmacists, as well as representatives of the MCI, the Director General of Health Services and other statutory bodies. According to Mr. Singh, an executive decision taken by a broad-based and knowledgeable body vested with statutory regulatory powers cannot be interdicted by the Court on the grounds urged. He relied upon the judgments of the Supreme Court in *Medical Council of India vs. State of Karnataka & Ors*⁵⁵, *Ashok Kumar Das & Ors. vs. University of Burdwan & Ors.*⁵⁶, *J.N. Medical College, Belgaum* and *Dr. S.K. Toshniwal*⁵⁷, in support

⁵³ Supra (note 17)

⁵⁴ (2019) 17 SCC 729

⁵⁵ (1998) 6 SCC 131

⁵⁶ (2010) 3 SCC 616

⁵⁷ Supra (note 9)



of the contention that such regulatory bodies possess wide powers to control the standard of education in the concerned disciplines. Mr. Singh contended that, particularly where human health is implicated, the Court should defer to the views of the expert regulator.

42. Even while accepting the wide powers of the PCI as laid down in the aforesaid judgments, it bears emphasis that the power must be exercised in a manner consistent with the statutory scheme. As held above, in the context of educational institutions, *Modern School*⁵⁸ and *Project Uchcha Vidya*⁵⁹ make it clear that the restriction on the fundamental right to establish and administer an institution by way of an executive order is impermissible. The decision of the Division Bench in *Krupanidhi*⁶⁰ – which concerns the powers of the PCI itself – also indicates that no such action can be taken by way of an executive policy decision.

43. Considerable emphasis was laid by Mr. Singh upon the judgment in *Jawaharlal Nehru Technological University*⁶¹. In that case, a decision taken by the State of Telangana to request the concerned regulator⁶² to declare “a holiday” on the establishment of new technical institutions was challenged. The Supreme Court reversed the judgment of the High Court, by which the aforesaid policy decision was set aside at the instance of the petitioner, which wished to establish a new course in Pharmacy. The Court held that the

⁵⁸ Supra (note 36)

⁵⁹ Supra (note 37)

⁶⁰ Supra (note 13)

⁶¹ Supra (note 54)

⁶² The All India Council for Technical Education



decision of the State Government was based upon a survey and supported by data, and disapproved the reasoning of the High Court that existence of vacancies in educational institutions cannot justify such a decision. However, it is clear from the decision of the Supreme Court that the policy decision of the State in that case was traceable to a specific power granted under Section 20(1) of the Telangana Education Act, 1982. Section 20(1) provides for a survey to be conducted to identify the educational needs of the locality, and Section 20(3) requires the authority to be satisfied that there is a need for providing such educational facilities in the concerned locality. These provisions have been specifically adverted to in paragraphs 14 and 15 of the judgment. In the absence of a corresponding statutory scheme supporting the impugned decisions of the PCI in the present case, the judgment in *Jawaharlal Nehru Technological University* is not dispositive of the present matter.

E. Judgment of the Karnataka High Court

44. As noted above, the impugned order has also been considered by the Division Bench of the Karnataka High Court⁶³. The Division Bench has affirmed the judgment of the learned Single Judge⁶⁴ with the following observations:-

“17. Thus, from perusal of Section 10 & 12 of the Act, it is evident that functions of the PCI have been clearly provided under the Act. The resolution dated 17.07.2019 was passed to put a moratorium on opening of new pharmacy college for running diploma and degree courses in pharmacy for a period of five years beginning

⁶³ WA No. 746/2020, decision dated 09.11.2021.

⁶⁴ W.P No. 52868/2019, decision dated 19.11.2020.



from academic year 2020-21. By impugned resolutions, the PCI has suspended the operation of Section 12 of the Act insofar as it pertains to approved courses of study and the examinations for a period of five years. Such a course of action to put a statutory provision into suspension animation for a period of five years by way of executive fiat is not permissible in law.

18. The contention that the resolution has been passed with a view to ensure quality of education is not worthy of acceptance as detailed and exhaustive guidelines have been prescribed by Section 10 of the Act as well as the regulations framed to ensure the quality of education.

19. Even assuming that though PCI may have the power to take a decision, dehors the provisions of the Act and the Education Regulations, the same cannot be sustained as it is violative of principles of audi alteram partem. Any administrative decision has to be taken after giving an opportunity of hearing to the aforesaid persons, in the instant case, admittedly, no such opportunity of hearing was afforded. Therefore, on this ground also the impugned resolution cannot be sustained.

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21. A statute is the manifestation of legislative intent. It is the positive declaration of law by the legislative in exercise of legislative functions, as distinguished from executive and judicial functions. The law duly enacted by the legislature in respect of subject matter to which it relates, operates until modified by legislature. The provisions of a statute can be modified or put in suspended animation by the Legislature alone and not by an Executive fiat."

The Karnataka High Court also held that the judgments in *Dr. S.K. Toshniwal*⁶⁵ and *Jawaharlal Nehru Technological University*⁶⁶, which

⁶⁵ Supra (note 9)



have also been cited before me, are not applicable to the case. For the reasons stated above, I respectfully concur with the conclusions reached by the Karnataka High Court.

F. Post-script

45. Having come to the conclusion in the present case that the exercise of executive authority by the PCI is in excess of its powers, the impugned decisions cannot be sustained. It may be emphasised, however, that I have not considered it necessary to examine whether the imposition of a moratorium is otherwise *ultra vires* the powers of the PCI. As arguments were advanced by learned counsel on some of these aspects, it is made clear that I have not rendered any finding on the question of whether a complete prohibition can be imposed as a facet of regulation (even by framing Education Regulations under Section 10 of the Act), or whether the doctrines of reasonableness and proportionality are attracted in the present case.

46. Although adjudication of the merits of the impugned decision is not required in view of the above conclusion, Mr. Singh suggested that the Court may wish to prescribe guidelines for any further consideration by the authorities. Having heard learned counsel at length on these points also, I consider it appropriate to make only the following brief observations, intended at this stage as guidelines to be borne in mind by the regulatory authorities:-

- a) Regulatory decisions which have far reaching consequences upon citizens require scientific study and supporting data. The regulator must have sufficient material to support its decisions

⁶⁶ Supra (note 54)



and correlate the objective of the decision with the material before it. The expectation is not of comprehensive or granular empirical data in every case, but of material which can demonstrate the reasonableness of the assumptions made and the decision taken. While acknowledging that the regulatory bodies are comprised of experts with relevant experience, it is necessary to emphasise that sufficient factual basis of the decision must be available, so that the authority is able to show due application of mind.

- b) The regulator must also show consistency in its approach and analysis of the data. In the present case, for example, the PCI has justified the moratorium *inter alia* on the ground of vacancy in pharmacy colleges. However, the PCI's communication dated 26.09.2019⁶⁷, contemplates an addition of 2,00,000 pharmacists to the workforce every year. There is *prima facie* an inconsistency in these considerations, to the extent that it is unclear whether such an addition would occur despite the vacancies in pharmacy colleges. Similarly, despite the grounds used to justify the moratorium, the PCI has, in fact, granted permission for addition of 34,800 seats in exempted institutions in the year 2020-21.⁶⁸
- c) The exemptions granted by the impugned communication dated 09.09.2019 are also, by their very nature, antithetical to the

⁶⁷ Annexure R-10 to the counter affidavit of the PCI dated 14.01.2021.

⁶⁸ Pages 22-23 of the written submissions filed by the petitioner in W.P.(C) 175/2021 dated 14.01.2021. I was also informed in the course of hearing that a further 13,000 seats were permitted in exempted institutions in 2021-22.



objectives of the moratorium. They must therefore bear close scrutiny. Even where such classifications are required, they must be reasonable and have a rational nexus with the objective of the decision maker. In the present case, for example, the exemption granted to the States with less than 50 pharmacy colleges is independent of the size of the State. Consequently, it bears no correlation to the pharmacist-to-population ratio prevailing in the State, or to any other metric which has been used to justify the moratorium in the first place. Similarly, the exemptions granted to existing institutions for increase in number of seats is also unsupported by any material on record.

- d) As a matter of practice, regulatory bodies entrusted with decisions which affect the establishment of institutions, such as the present case, would do well to consider whether it is possible to make their decisions known some time before they come into effect. Although Mr. Singh submitted that the petitioners have not laid any factual basis for their argument that they have expended any amount by way of infrastructure, such grievances can be minimised if such far-reaching decisions are made effective after a reasonable lapse of time, rather than immediately upon announcement.

Conclusion

47. For the reasons aforesaid, the impugned decisions of the PCI dated 17.07.2019 and 09.09.2019 are set aside. The writ petitions are allowed in the aforesaid terms, but without any order of costs.



48. I would like to record my sincere appreciation for the assistance rendered by learned counsels in this case, particularly Mr. Sanjay Sharawat and Mr. Maninder Singh. Due to the restricted functioning of the Court from time to time, the hearings were regrettably prolonged but learned counsel were painstaking in their efforts to assist the Court with the requisite material on record, and the case law.

49. A copy of this judgment be kept in the file of each of the petitions.

PRATEEK JALAN, J.

MARCH 07, 2022

'sc/sv/vp/pv/hkaur/bp'



सत्यमेव जयते