

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1076 OF 2023

Sarojini College of Pharmacy through Principal RS Bagali ...Petitioner
Versus
The State of Maharashtra (through the Department of Higher Technical Education) & ...Respondents
Anr

WITH
WRIT PETITION NO. 13249 OF 2022

Sarojini College of Pharmacy through its Principal ...Petitioner
Versus
The State of Maharashtra through the Department of Higher Technical Education & ...Respondents
Anr

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Mr Prasad Dani, Senior Advocate, i/b Suryajeet P Chavan, for the
Petitioner in both Writ Petitions.
Mr SB Kalel, AGP, for Respondent No. 1-State in both Writ Petitions.
Mr Rui Rodrigues, with Suyash Walbhor & Jainendra Sheth, for
Respondent No. 2 in both Writ Petitions.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 24th March 2023

PC:-

WRIT PETITION NO. 1076 OF 2023:

1. Mr Rodrigues has filed an Affidavit in Reply that runs from page 47 — for a good 400 pages — to page 454. The body of the Affidavit itself is until page 69 but it sets out with some precision the reasons why, according to the Fee Regulatory Authority, the fees permissible to the Petitioner to be charged to students for the B Pharm course were reduced. The Affidavit also says that there is an alternate remedy in the form of a review. Mr Rodrigues points out that at page 454 the Petitioners were notified of the availability of the review and the facility to download the calculation sheet. That review had to be filed within a specified period, i.e., 15 days. The communication at page 454 is of 24th November 2022.

2. Prima facie, the Affidavit is correct to the extent that it says that when there is an alternative remedy for the same relief, this Court ought not to oust that jurisdiction. The only way the alternate remedy can now be afforded is to condone the delay in filing the Review Application and to allow the Petitioners an opportunity to submit a review to the Fee Regulatory Authority. In that Review Application, the Petitioners will proceed on the basis that the disallowances are on the justifications provided in the present Affidavit in Reply read with its annexures. The Review Application must be filed by 10th April 2023. We request the Fee Regulatory Authority to disposed it of at the earliest and in any event by 20th April 2023. In the Review Application, and since this was clearly permissible even according to the applicable rules, the Petitioners

will be permitted to file additional documents in support of their case in review. All contentions are kept open.

3. We have not addressed the merits of the matter.

4. The Writ Petition is disposed of in these terms with no order as to costs.

WRIT PETITION NO. 13249 OF 2022:

5. The challenge is to two orders of the Fee Regulatory Authority. The first is of 9th December 2021. This is the order in original. The second order of 29th June 2022 is on a statutorily available review. By the first order, the Petitioners' application for fees for the B Pharm course and D Pharm course were reduced from the figures the Petitioners sought to Rs. 51,000/- and Rs. 41,000/- for the Academic Year 2021-2022. The reduction was by the first order of 9th December 2021. The Petition itself admits that the Petitioners were given an opportunity for review and that the Petitioners availed of this opportunity. There was in fact a hearing and during that hearing the Fee Regulatory Authority gave the Petitioners an opportunity to withdraw the Review Application. The Petitioners took that opportunity as well and unconditionally withdrew the Review Application.

6. Paragraph 8 of the Petition at page 9 then asserts that the withdrawal is in essence a rejection of the Petitioners' Review Application. That assertion has only to be stated to be rejected. The

Petitioner could as well have taken a dismissal of its Review Application. We cannot accept Mr Dani's submission that even if the Review Application is withdrawn, the Petitioners can still sustain a challenge to the order in original. If that be so, there would simply be no finality to these matters.

7. We see no merit in the Petition. It is to rejected. However, it is open to the Petitioners to apply afresh for the next academic year and that application will be decided on merits, uninfluenced by the previous orders.

(Neela Gokhale, J)

(G. S. Patel, J)