

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 725/2023

(ANKUSH SHIKSHAN SANSTHA & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Nitin Lalwani, counsel for the petitioners.

Shri A.S. Fulzele, Additional Government Pleader for the respondent nos.1 and 2.

Shri N.S. Khubalkar, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : APRIL 03, 2023.

Heard.

2. The petitioner no.1-Society which is incorporated under the Companies Act, 2013 that runs the petitioner no.2-Institute of Life Sciences. It has challenged the communication dated 19.01.2023 issued by the respondent no.3-State Common Entrance Cell (for short, 'the Cell') and also seeks a direction to provide it a link and password so as to facilitate uploading the Institutional Profile of the Institute alongwith particulars of the students admitted in the First Year B.Pharm course coupled with the registration of admissions of the said students.

3. Shri Nitin Lalwani, learned counsel appearing for the petitioners submitted that on 28.12.2022 the Pharmacy Council of India was pleased to grant approval to the Institute for Academic Session 2022-23 for conducting the First Year B.Pharm course for sixty students. Pursuant thereto, the Higher and Technical Education Department on 30.12.2022 issued a Government Resolution granting permission to start the aforesaid course on a permanent no-grant basis. On 02.12.2022 provisional affiliation was granted to the said Institute by Dr.Babasaheb Ambedkar Technological University followed by final approval dated 05.01.2023. An advertisement was thereafter issued on 07.01.2023 by the petitioner no.2 and on 10.01.2023, sixty students were admitted by providing them spot admission. On 12.01.2023, the Society issued a communication to the Cell requesting approval to the aforesaid admissions. However on 19.01.2023, the Cell informed the Society that the Joint Director, Higher Education had

granted the necessary permission on 06.01.2023 but prior thereto the list of the vacant seats after the CAP Round III had been published on its website and therefore the request made by the petitioners could not be granted. It is submitted by the learned counsel for the petitioners that based on the affiliation received on 05.01.2023 the requisite admissions were made and there was no justification on the part of the Cell to refuse to approve the said admissions for the Academic Year 2022-23. Refusal to grant such permission to upload the students' profile would result in depriving the students of one academic year for no justifiable reason. It was thus urged that necessary directions be issued to the Cell to take all necessary steps so as to ensure that the students were not put at a loss of one academic year.

4. Shri N.S. Khubalkar, learned counsel for the Cell opposed aforesaid submissions. At the outset, he invited attention to the judgment of the Hon'ble Supreme Court in *Asha Versus Pt. B.G. Sharma University of Health Sciences & Others* [(2012) 7 SCC 389] to urge that the entire admission process of the professional course was required to be conducted in accordance with the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions to the Full Time Professional Post Graduate Technical Courses), Rules, 2017 (for short, 'the Rules of 2017'). The last round for admission commenced from 06.01.2023 and it was necessary for the Institute to have received all necessary permissions as well as affiliation prior to that date. It was only thereafter permissible for the Institute to admit sixty students and participate in the admission process. The petitioners' entry in this process ought to have been one day prior to 06.01.2023 which is 05.01.2023. The learned counsel invited attention to the provisions of Section 49 of the Dr.Babasaheb Ambedkar Technological University Act, 2014 (for short, 'the Act of 2014') to urge that it was not open for the Institute to undertake the admission process prior to grant of first time affiliation by the University. It was thus submitted that no relief deserves to be granted to the petitioners.

5. On hearing the learned counsel for the parties and after perusing the material on record, it becomes clear that as per the provisions of Section 49(6) of the Act of 2014 it is not permissible for a College or an Institution to admit students unless the University grants first time affiliation to it. It is only on 05.01.2023 that affiliation came to be granted to the Institute. The Institute proceeded to admit sixty students on 10.01.2023. The necessary process with regard to institutional round commenced on 06.01.2023 on which day at 10.40 a.m. the Technical Education Department uploaded the requisite information pertaining to the documents of the Institute. We find that this course followed by the petitioners is not in accordance with the Act of 2014 as well as the Rules of 2017. The Institute did not participate in any CAP round conducted by the Cell and hence there was no question of any seats remaining vacant in the CAP rounds for being filled by the Institute under the Institutional quota. Entry of an Institute in the admission process directly at the Institutional level without participating in any CAP round conducted earlier is not permissible under Rule 13 of the Rules of 2017 as well as Clause 13(h) of the Information Brochure published by the Cell. We therefore do not find any legal basis to grant the reliefs prayed for by the petitioners. It is clear that the petitioners have participated in the admission process directly in the Institutional round which does not appear to be permissible.

6. Insofar as the sixty students who have taken admission are concerned, it appears that they have responded to the advertisement published by the petitioners on 07.01.2023. It is true that the students ought to have first verified the credentials and the eligibility of the Institute before seeking admission in the B.Pharm course. Be that as it may, since the said students have already been admitted and as it has been indicated by the pursis filed by the Cell that there are vacant seats available in various colleges in Nagpur region, it is directed that the Cell shall transfer the admissions of these sixty students to affiliated colleges in Nagpur Region so that the students do not lose their academic year. The legal rights of the students to proceed against the petitioners for the inconvenience

caused to them for having granted such admission are kept open for being agitated in accordance with law.

7. The writ petition stands dismissed with no order as to costs.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

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