

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

WRIT PETITION NO. 1365/2023

(SATCHIKITSA PRASARAK MANDAL, NAGPUR & ANOTHER **VERSUS** STATE COMMON ENTRANCE
CELL, MUMBAI & OTHERS)

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

Court's or Judge's order

Shri B.G. Kulkarni, counsel for the petitioners.
Shri N.S. Khubalkar, counsel for the respondent nos.1 and 2.
Shri A.S. Fulzele, Additional Government Pleader for the respondent nos.4 and 5.
Shri P.S. Wathore, counsel for the applicant in C.A.W. No. 741 of 2023.
Shri A.B. Patil, counsel for the applicant in C.A.W. No. 970 of 2023.

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

DATE : APRIL 03, 2023.

Heard.

2. The petitioner no.1-Society which is registered under the Maharashtra Public Trusts Act, 1950 as well as the Societies Registration Act, 1860 that runs the petitioner no.2-Institute of Pharmacy seeks a direction to be issued to the respondent no.1-State Common Entrance Cell (for short, 'the Cell') to provide it a link and password so as to facilitate uploading the Institutional Profile of the Institute alongwith particulars of twenty seven students admitted in the First Year B.Pharm course coupled with the registration of admissions of the said students.

3. Shri B.G. Kulkarni, learned counsel appearing for the petitioners submitted that on 29.12.2022 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. Thereafter on 09.01.2023, affiliation was granted to the said Institute by Dr.Babasaheb Ambedkar Technological University. On 10.01.2023, twenty seven 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 20.01.2023, the Cell informed the Society that the Joint Director, Higher Education had granted the necessary permission on 09.01.2023 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 09.01.2023 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 the 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. Civil Application (W) No. 970 of 2023 has been filed by a beneficiary of the public trust who is also the Vice Principal of Nagpur Homeopathy College run by the Society. Shri A.B. Patil, learned counsel for the applicant invited attention to the information supplied under the provisions of the Right to Information Act, 2005 to urge that the Institute had been granted conditional affiliation on 09.01.2023. On the basis of such conditional affiliation, it was not permissible to commence the process of admission. It is submitted that on 01.01.2023 itself the Institute issued an advertisement inviting students seeking admission to the First Year B.Pharm course. Reference was also made to the email sent by the Vice Chancellor of the University on 02.01.2023 in which the Institute was directed to take back its advertisement in the matter of grant of admissions till the University granted conditional affiliation to it. It was submitted that the entire admission process was conducted in the absence of valid permission/ affiliation and the petitioners were liable of playing with the future of the students. No relief therefore was liable to be granted in the writ petition.

Civil Application (W) No. 741 of 2023 has been filed by Dr.Ramesh Balpande who claims to be a Trustee of the public trust. In addition to the contentions raised by the applicant in Civil Application (W) No. 970 of 2023 it was submitted that the Pharmacy Council of India was a necessary party in the present proceedings but it was not impleaded in the writ petition. No relief was liable to be granted to the petitioners.

6. 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. As per the information supplied to the applicant in Civil Application (W) No. 970 of 2023 by the Affiliation Department of the University under the provisions of the Act of 2005, it is clear that on 09.01.2023 conditional affiliation was granted to the Institute. Prior thereto, the Institute had published an advertisement in daily 'The Hitavada' on 01.01.2023 inviting applications from interested students to

seek admission in the B.Pharm course. In the light of aforesaid, the University on 02.01.2023 through its Vice Chancellor informed the Society that the scrutiny of the application for affiliation as well as the physical verification of the facilities had not been completed. Despite that such advertisement had been issued which was illegal. The petitioners were called upon to take back the circulation of the advertisement and stop further actions in that regard unless the University granted it clear affiliation. On 04.01.2023 the Institute withdrew the advertisement and clarified that the admission process would commence after affiliation was granted by the University. It is only on 09.01.2023 that conditional affiliation came to be granted to the Institute. The Institute proceeded to admit twenty seven students on 10.01.2023. The necessary process with regard to institutional round commenced on 06.01.2023 and it is clear that on that date the Institute had not received clear affiliation. Thus, without there being any clear affiliation granted by the University, the Institute proceeded to make such admissions. 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 prior to receipt of clear affiliation from the University.

7. Insofar as the twenty seven students who have taken admission are concerned, it appears that they have responded to the advertisement published by the petitioners on 01.01.2023. 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 twenty seven 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 admission in the absence of clear affiliation are kept open for being agitated in accordance with law. It is clarified that we have not examined the *inter se* disputes referred to by the applicants seeking intervention in the matter pertaining to the Act of 1950. We have merely examined the claim of the petitioners as regards their entitlement to seek regularization of the admissions made by them in the First Year B.Pharm course.

8. The writ petition is thus dismissed with costs. The civil applications are also disposed of.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

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