

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

WRIT PETITION NO. 6298 OF 2022

- PETITIONERS:**
1. Bahwaan Educational and Social Team,
a Society registered under Societies
Registration Act, 1860, Through its
Secretary, Mrs. Shamim Abdul Aziz
having its Registered Office at 110, Pension
Nagpur, Nagpur - 440013.
 2. New Montfort Institute of Pharmacy,
Through its Officiating Principal -
Mrs. Shabnamsaheer w/o. Tarik Sayyed,
having its registered office at Ashti,
Wardha - 442202.

VERSUS

- RESPONDENTS :**
1. Union of India,
Through its Secretary,
Ministry of Health and Family Welfare,
Government of India, New Delhi.
 2. State of Maharashtra
Through its Secretary,
Ministry of Higher and Technical
Education, Mantralaya, Mumbai.
 3. Pharmacy Council of India
Through its Secretary,
NBCC Centre, 3rd Floor, Plot No.2,
Community Centre, Maa Anandamai
Marg. Okhla Phase-I,
New Delhi-110020.
 4. Maharashtra State Pharmacy Council
through its Secretary having its Office
Address : R-square, 4th Floor, Opp
E.S.I.S. Hospital Compound, L.B.S.
Marg, Mulund (W), Mumbai - 400 080.
Phone : 022-25684291
Website : www.mspscindia.org

S/Shri S. P. Bhandarkar and Manish Shukla, Advocates for petitioners.
Shri N. S. Deshpande, DSGI for respondent Nos.1 and 3.
Shri M.J. Khan, Assistant Government Pleader for respondent No.2.
Shri A. H. Joshi, Advocate for respondent No.4.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

RESERVED ON : 09/01/2023.

PRONOUNCED ON : 10/01/2023.

JUDGMENT : (PER VALMIKI SA MENEZES, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. This writ petition under Article 226 of the Constitution of India seeks quashment of the decision of the respondent No.3 dated 11/11/2022 rejecting the petitioners' application for starting / commencement of a new Course of M. Pharm Pharmaceutics and M. Pharm (Quality Assurance); the petitioners have further sought a declaration that Clause (c) of the Scheme framed by respondent No.3 under Regulation 4.1 (b) of the Master of Pharmacy (M.Pharm) Course Regulation, 2014 is per se illegal, arbitrary and contrary to the mandate of the Pharmacy Act, 1948 (for short, "the Act").

3. The petitioners aver in the petition that it is a society registered under the Societies Registration Act, 1860 running a

Minority Institution known as "New Montfort Institute of Pharmacy" at Wardha. That, the said college has been conducting various Courses in Pharmacy approved by All India Council of Technical Education, New Delhi, Pharmacy Council of India, New Delhi (respondent No.3) and Director of Technical Education, Maharashtra. For the purpose of conducting these courses, which are Diploma in Pharmacy and the Course of Bachelor of Degree in Pharmacy (Under-Graduate), it is affiliated to Rashtra Sant Tukdoji Maharaj Nagpur University "the University" and the Maharashtra State Board of Technical Education.

4. It is further the petitioners' case that for the purpose of running its Bachelor in Pharmacy Course, it was granted approval on 30/04/2018 by All India Council of Technical Education (AICTE) for the year 2018-2019 as well as by respondent No.3 and its first batch of students, who have obtained B. Pharm Degree in Summer - 2022, for the course and examination conducted by the RTMNU, have passed out and obtained Degree Certificates from the said University in Summer 2022.

The petitioners further contend that it has being granted No Objection Certificate by the University for conducting New Course of M.Pharm (Quality Assurance) and M. Pharm Pharmaceutics with intake capacity of 15 students each vide its

letter dated 29/04/2022. The certificate issued by the University confirms the affiliation of College to that University.

5. The petitioners further aver that in terms of the requirement of the Pharmacy Regulations, it had applied on annual basis vide the on-line application, annexed at Annexure-M of the petition, for permission to continue its B. Pharm Course, and simultaneously, it has made an application for commencing its New Course for the aforesaid M. Pharm Degrees. The petitioners have stated that the respondent No.3 has received various payments from it towards Pharmacy Education Regulatory Charges for its B. Pharm and D. Pharm Courses and charges for starting its New Course of M. Pharm, the total sum received is Rs.6,49,000/-. However, according to the petitioners, despite submitting all necessary documents, and conforming to the Scheme framed under the Regulations applicable to the Master of Pharmacy (M. Pharm) Course, the respondent No.3 came to reject its application for commencement of M.Pharm Course on the ground that it had not received approval for its B. Pharm Course for the Academic Session 2022-2023 and that the college did not have approval for B. Pharm Course under Section 12 of the Act.

The rejection of the petitioners' application for grant of permission to start a New M. Pharm Course was challenged by the

petitioners before the respondent No.3 Pharmacy Council of India which, in its 372nd, a meeting of the Executive Committee had on 11/11/2022 rejected the petitioners' application for permission to commence a New M. Pharm Pharmaceutics and M. Pharm (Quality Assurance) Courses on the sole ground that its B. Pharm Course does not have approval under Section 12 of the Act. It is this order that is challenged before us, mainly on the ground that the rejection is contrary to the provisions of Section 12 of the Act.

6. After notice was issued to the respondents, respondent No.3 - Pharmacy Council of India, New Delhi has opposed the admission of the petition by filing its affidavit dated 06/01/2023 through Smt. Pratima Tiwari, its Assistant Secretary. In the affidavit, the main ground for opposing the petition is that there is no approval granted to the course of study and examination under the provisions of Section 12 of the Act, and though the petitioners had received permission for its B. Pharm Course, it was required, by the Regulations of 2014 to have run the B. Pharm Course for 8 continuous Semesters and have at least one batch complete such course before permission could be granted for commencement of M. Pharm Course.

The counter-affidavit of the respondent No.3 does not dispute that the Bachelor Degree Course of the petitioners' college

has received permission of the respondent No.3 from year to year for the course of study for B. Pharm. It also does not dispute that the University to which the petitioner is affiliated has been granted an approval as required under Section 12 of the Act, for its course of study for Diploma in Pharmacy, Bachelors Degree in Pharmacy and Master Degree in Pharmacy. The respondent No.3 also does not dispute the fact that it has granted permission in its Resolution No.32-563/2009-PCI to another College i.e. Guru Nanak College of Pharmacy, Nagpur for the course conducted by the same Authority i.e. Nagpur University to which college was affiliated. There is also no substantial dispute raised to the Statement of Marks and provisional Degree Certificates produced by the petitioners on record for its students who have obtained B.Pharm Degree from the very same University in the Summer of 2022, nor to the petitioners contention that the respondent No.3 - Pharmacy Council of India is in receipt of the letter dated 29/04/2022 issued by the said University to the petitioners, certifying that it was affiliated to the Nagpur University and that the University had no objection for the petitioners to conduct a New Course for the Post-Graduate Degree of M.Pharm Pharmaceutics and M. Pharm (Quality Assurance) with intake capacity of 15 seats in each Course for the year 2022-2023.

7. We have heard Shri S. P. Bhandarkar, learned counsel for the petitioners, Shri N. S. Deshpande, learned DSGI for respondent Nos.1 and 3, Shri M. J. Khan, learned AGP for respondent No.2 and Shri A. H. Joshi, learned counsel for respondent No.4. We have perused the record of the petition and the affidavit-in-reply of the respondent No.3.

At the outset, we have noted that there is considerable urgency for the disposal of the petition, since the last date for uploading the names of the petitioners on the website of respondent No.3 as a Recognized College for Master Degree Course was declared on 11/01/2023. With the consent of all the parties, we have issued Rule, and heard the petition finally after the respondents have waived notice of Rule.

8. It is the contention of Shri Bhandarkar, learned counsel for the petitioners that the resolution and the order of the respondent No.3 dated 11/11/2022 itself records that the approval / permission for conducting B. Pharm Course for the year 2022-2023 for the petitioners college was accorded. However, as contended by the petitioners, the rejection of permission to conduct M. Pharm Course, as applied for, on the ground that the approval under Section 12 of the Act for B. Pharm Course itself has not been granted, was not only contrary to the facts before the

Council, but was also a ground which was wholly untenable in terms of provisions of Section 12 of the Act. After initially arguing that the clause (2)(c) of the Scheme framed under Regulation 4.1(b) of the Master of Pharmacy (M.Pharm) Course Regulations, 2014 was unreasonable, as being without any rational the contention was given up by the learned counsel for the petitioners.

9. Per contra, learned counsel for the respondent No.3 would submit that though it is clear from the record of the respondent No.3 that it had in fact accorded permission for the year 2022-2023 to conduct B. Pharm Course, a fresh approval was required for each year, to the college in terms of Section 12 of the Act, both for the approval of the course of study and for holding examination. He contends that though the counsel does not dispute that the concerned University has approval for its course from the respondent No.3, the petitioners college is also required to obtain approval under Section 12 first for his B. Pharm Course and only then could the Council consider granting permission for conducting its M. Pharm Course.

10. For a clear understanding of the rival submissions made before us, it would be advantageous to reproduce the provisions of Section 12 of the Pharmacy Act, 1948 as under :-

"12. Approved courses 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."

11. A bare perusal of Section 12 of the Act would reveal that the provision in the first place applies to an "Authority" in a State which conducts a course of study for Pharmacy. A further reading of Section 12 of the Act would lead to no manner of doubt that the provisions do not apply to individual affiliated college or Institution, but apply to the "Authority" in a State which must necessarily mean a University or Body under the State Government, which conducts a course of study for Pharmacy. It is further clear from the reading of these provisions that such course of study for Pharmacy shall be designed in conformity with the Education Regulations of the Pharmacy Council and the Council is required to grant its approval after considering the course of study applied for, by such University or Institution of the State Government or Central Government that might wish to conduct such a course of study.

Once the said course of study is granted approval under Sub-section (1) of Section 12 of the Act by the Pharmacy Council, all affiliated colleges and Institutions affiliated to such University who would choose to follow the approved course of study in Pharmacy are not required to seek any further approval from the Council for conducting the Degree which would be conferred for such course by that University.

12. Sub-section (2) of Section 12 of the Act further requires that such "Authority" being the University should seek an approval for Examination in Pharmacy that it would provide for grant of Degrees or Diploma in that subject and in the same manner that sub-section (1) would apply to a case of approval for a course of study, sub-section (2) would apply to an approval for the examination to be conducted at the end of such course of study.

13. There is no dispute in the present case that the Council itself has granted permission to the petitioners college to run its B.Pharm Course for the year 2022-2023. There is also no dispute that the first batch of B. Pharm Course, which is affiliated to the University has applied its Degree Course and Degrees have been conferred on the students for the summer of 2022. The only question then to be considered is whether it was appropriate for the respondent No.3 to reject permission to the petitioners to conduct its M. Pharm Course (Quality Assurance) and M. Pharm Pharmaceutics Course on the sole ground that it had no approval under Section 12 for conducting its B. Pharm Course.

14. Based upon the conclusion arrived at on the interpretation of the provisions of Section 12, as held by as above, we are of the considered opinion that the provisions of Section 12

of the Act would not at all apply to an individual college, such as, the petitioners and neither would the Regulations of 2014 or provisions of the scheme framed thereunder provide for an embargo on the petitioners for receiving permission for its New Course framed for the year 2022-2023 on such a ground.

15. We are, therefore, of the opinion that the rejection of the petitioners application for permission to conduct Post-graduate Course of M. Pharm Pharmaceutics and M. Pharm (Quality Assurance) by the decision or order dated 11/11/2022 passed by the Respondent No.3 impugned in the petition, is arbitrary and contrary to the scheme of the Pharmacy Act, 1948. We quash and set aside the order dated 11/11/2022 and consequently, direct the respondent No.3 to forthwith issue necessary permission to the petitioners to conduct the Post-Graduate M. Pharm Pharmaceutics and M. Pharm (Quality Assurance) Courses. Consequently, the Respondents are directed to add the name of the petitioner No.2 to its list of eligible Colleges for these Courses in the Central Administrative Process (CAP) Round to enable prospective students to opt for admission to the said Courses conducted by the Petitioner No.2. Accordingly, we pass the following order :-

- i] The writ petition is allowed in terms of Prayer Clause (A).

ii] The order / decision dated 11/11/2022 passed by Respondent No.3 is quashed and set aside.

iii] The respondents are hereby directed to add the name of the petitioners' college to their websites in the Central Administrative Process (CAP) Round forthwith.

iv] The respondent No.3 is hereby directed to forthwith grant permission to the petitioners for their new Post-Graduate Degree Course of M. Pharm Pharmaceutics and M. Pharm (Quality Assurance) Courses for the year 2022-2023.

Rule is made absolute in the above terms. No costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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