

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

WRIT PETITION NO. 8226 OF 2022

Gramin Vikas Multipurpose Education
Society, Nagpur having Office at
Plot No.24, Old Subedar Layout,
Nagpur-24, through its President,
Shri. Nitin Madhukar Deshmukh

.....PETITIONER

...V E R S U S...

The Pharmacy Council of India,
NBCC Centre, 3rd Floor, Plot No.2,
Community Centre Maa Anandamai
Marg, Okhla Phase 1,
New Delhi – 110 020.

.....RESPONDENT

Mr. Firdos Mirza, Advocate for the petitioner
Mr. Nandesh Deshpande, DSGI for the respondent

CORAM : ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 24-04-2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent,
the petition is heard finally.

3. The petitioner - society is managing various educational
institutions, and is desirous of setting up Prabhat Institute of
Pharmacy (D.Pharm) in Taluka Brahmapuri, District Chandrapur.

4. Respondent is the apex body for education of pharmacy and is the creature of the Pharmacy Act, 1948 (Act of 1948).

5. The challenge in the petition is to the communication-cum-order dated 23-11-2022 of the Pharmacy Council of India (PCI) rejecting the application preferred by the petitioner for starting D. Pharm course. The rejection is premised on the failure to submit the consent of Affiliation of the Examining Body, which according to the petitioner, is not a requirement contemplated by the statutory provisions.

6. Facts are broadly incontroverted, and we may straightaway proceed to consider the statutory provisions on the touchstone of which the grievance of the petitioner shall have to be scrutinized.

7. The Act of 1948 was enacted to make better provision for the regulation of profession and practice of pharmacy and for that purpose to constitute Pharmacy Councils.

7.1 Section 2 is the interpretation clause. (c) defines “Central Council” to mean the Pharmacy Council of India constituted under Section 3. (j) defines “State Council” to mean a State Council of Pharmacy constituted under section 19 and

includes a Joint State Council of Pharmacy constituted in accordance with an agreement under section 20.

7.2 Section 3 provides for constitution and composition of Central Council.

7.3 Section 10 empowers the Central Council, subject to the approval of the Central Government to make educational regulations, prescribing the minimum standard of education required for qualification as a Pharmacist, which provision reads thus :

“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.”

7.4 The next relevant and pivotal provision is Section 12 which we may extract verbatim.

“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.”

7.5 Section 18 is the repository of the power to make regulations which reads thus :

“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 consistent with this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for -

[(a) the management of the property of the Central Council;]

(b) the manner in which elections under this Chapter shall be conducted;

(c) the summoning and holding of meetings of the Central Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

(d) the functions of the Executive Committee, the summoning and holding meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;

(e) the powers and duties of the President and Vice-President;

(f) the qualifications, the term of office and the powers and duties of the [Registrar, Secretary], Inspectors and other officers and servants of the Central Council, including the amount and nature of the security to be furnished by the [Registrar or any other officer or servant].

(g) the manner in which the Central Register shall be maintained and given publicity;

(h) constitution and functions of the committees other than Executive Committee, the summoning and holding of meetings thereof, the time and place at which such meetings shall be held, and the number of members necessary to constitute the quorum.]

(3) Until regulations are made by the Central Council under this section, the President may, with the previous sanction of the Central Government, make such regulations under this section, including those to provide for the manner in which the first elections to the Central Council shall be conducted, as may be necessary for carrying into effect the provisions of this Chapter, and any regulations so made may be altered or rescinded by the Central Council in exercise of its powers under this section.

[(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 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.]”

7.6 Chapter III deals with the constitution of the State Pharmacy Councils and the corresponding provisions.

7.7 Chapter IV deals with registration of Pharmacists and Chapter V which purports to deal with miscellaneous aspects, provides vide Rule 46 the power to make rules to carry out purposes of Chapter III, IV and V.

7.8 PCI has framed “The Education Regulations, 2020 for Diploma course in Pharmacy”. Regulation 8 prescribes that no authority in a State shall start or conduct Diploma in Pharmacy course of study without the prior approval of the PCI, and the course of regular academic study prescribed under Regulation 6 shall be conducted in an institution, approved by the PCI under sub-section (1) of Section 12 of the Act of 1948. The proviso mandates that the PCI shall not approve any institution under this regulation unless it provides adequate arrangements for teaching in regard to building, accommodation, equipments and teaching

staff etc. as specified in Appendix-A to the Regulation as amended from time to time.

8. In the context of the reason recorded for rejection of the application seeking permission to start D. Pharm course, the Maharashtra State Board of Technical Education Act, 1997 (Act of 1997) will need consideration. Act of 1997 is enacted to provide for establishment of a State Board to regulate matters pertaining to Diploma Level Technical Education in the State of Maharashtra. Section 2 is the definition clauses. (b) defines 'Board' to be the Maharashtra State Board of Technical Education established under section 3. (d) defines 'Diploma Level Technical Education'. (e) defines 'examination' to mean one or more examinations conducted by the Board.

8.1 Chapter II deals with the establishment and constitution of the Governing Council and Board.

8.2 Chapter III deals with the powers and duties of the Governing Council and Board. Chapter IV deals with permission, affiliation, conferring autonomous status and equivalence. Section 25 prescribes the conditions of affiliation. Section 27 prescribes the procedure for affiliation and Section 32 empowers the Board

to withdraw affiliation and recognition.

9. It would not be necessary to delve deeper in the power of the Board under the Act of 1997, to consider, grant and withdraw affiliation. The limited issue which needs consideration is whether the PCI can insist that an application under Section 12 of the Act of 1948 shall not be considered unless accompanied by consent of affiliation from the Examining Body. The thrust of the submissions canvassed by learned counsel for the petitioner Mr. Firdos Mirza is that there is no power vested in the PCI to insist on such consent. Learned Deputy Solicitor General of India Mr. Nandesh Deshpande would disagree.

10. At this stage, we may consider the affidavit in response of the PCI.

10.1 The affidavit in response refers to the scheme of the Act of 1948, emphasizes on Section 10 which empowers the PCI to make Education Regulations and on the provisions of Section 12(1) which we have extracted supra.

10.2 PCI refers to the decision of the Apex Court in *Parshavnath Charitable Trust Vs. AICTE [(2013) 3 SCC 385]* which lays down strict timelines to be followed by the authorities in order to ensure that the academic calendar and schedule is scrupulously

implemented. The reference and reliance on the said decision is to emphasize that no relief can be granted to the petitioner – institution in respect of the application preferred for the academic year concerned.

10.3 PCI then refers to the circular dated 21-6-2022 which mentions that submission of consent of affiliation of the Examining Authority and NOC from the State Government is prerequisite and mandatory for approval under Section 12(1) of the Act of 1948 for the academic session 2022-2023.

10.4 PCI asserts that since the petitioner failed to furnish the consent of affiliation of the Examining Body for the D.Pharm course, the application is rightly rejected.

10.5 Relying on the provisions of Sections 10, 12 and 18 of the Act of 1948, PCI contends that the Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014 and in particular, Regulation 9.2 empowers the PCI to frame scheme, and that the scheme framed in exercise of power conferred by the said regulation provides that the consent of affiliation of the Examining Authority and NOC of the State Government is mandatory for starting B.Pharm course.

10.6 The affidavit in response appears to be a composite affidavit dealing with the challenges in two separate petitions. In the present petition, the challenge is to the rejection of the application to start the D.Pharm course. The petitioner has also preferred Writ Petition 7840/2022 in which the challenge is to the rejection of the application for permission to start the B.Pharm course. Mr. Firdos Mirza would emphasize, that the Regulations of 2014 concern with the B.Pharm course, and assuming that the regulations could have provided for such scheme, the said aspect will have to be considered in the other petition which concerns the B.Pharm course. Mr. Mirza elaborates the said submission by explaining that in so far as the B. Pharm course is concerned, the extant regulations do not empower the PCI to frame such scheme. Learned Deputy Solicitor General of India fairly does not join issue with Mr. Firdos Mirza on the said aspect.

11. Referring to the affidavit in response, we note that several argumentative submissions are made, which need not detain us in as much as the submissions focus on the Apex Court caution that the High Courts must not pass interim orders tinkering with the academic calendar or substitute its opinion for that of the expert academic body, and that the Act of 1948

overrides the other enactments holding the field and the PCI is the supreme authority in the field legislatively assigned. We are conscious of the law. We are restricting the consideration to the availability of power to insist on the consent of the Examining Authority for considering application under Section 12(1) of the Act of 1948 and we have no inclination to tread on the forbidden territory.

12. Mr. Nandesh Deshpande has placed on record the scheme for approval of D.Pharm course under Section 12 of the Act of 1948 and the Education Regulations, 2020. Clause 2 of the scheme prescribes the qualifying criteria and we extract the said clause.

“2. Qualifying Criteria :

The following conditions shall be fulfilled by an applicant.

- a) The applicant shall not start, conduct or increase in intake in D.Pharm course without the prior approval of the Pharmacy Council of India.*
- b) D.Pharm course shall be conducted only in those institutions which are approved by PCI for D.Pharm course as provided under sub-section (1) of section 12 of the Pharmacy Act, 1948.*
- c) The applicant shall provide necessary infrastructure facilities including teaching staff as prescribed by PCI -
 - i) under Appendix-A of “The Education Regulation, 2020 for Diploma course in Pharmacy” for starting**

of the course.

ii) Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014.

d) Number of Students to be admitted in D.Pharm course :

- At present the number of admissions to D.Pharm course are restricted to 60 only.”*

Clause 3 prescribes the prerequisite mandatory documents to be submitted by an applicant. PCI is relying on (a) which provides for the consent of affiliation of Examining Authority shall be submitted along with application under Section 12(1) of the Act of 1948.

13. Mr. Nandesh Deshpande fairly does not dispute that while the Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014 and in particular clause 9.2 clearly speaks of scheme prescribed by the Pharmacy Council, such provision or power to frame scheme is not available in the Education Regulations, 2020 for Diploma Course in Pharmacy.

14. In as much as, in the present petition, the consideration is restricted to the rejection of the application to start the D.Pharm course, it is not necessary to consider the broader question as to the interplay between the scheme framed and the parent statutory provisions. Neither the Act of 1948 nor the Education Regulations,

2020 for Diploma Course in Pharmacy empower the PCI to insist that an application under Section 12(1) of the Act of 1948 for approval to start the D.Pharm course shall be accompanied by the consent of affiliation of the Examining Authority. Such is also the view consistently taken by the High Court of Kerala at Enakulam in *WP (C) 14617 of 2021 (The Principal DM Wims College of Pharmacy Vs. The Pharmacy Council of India and ors.) dated 17-9-2021* and in *WP(C) 15525 of 2018 (Westfort Higher Education Trust, Pottore Vs. State of Kerala and ors.) dated 8-2-2019* and in response to our query, Mr. Nandesh Deshpande informs us that the decisions of Kerala High Court have not been carried to the Apex Court.

15. In the light of the discussion supra, we hold and declare that as the statutory scheme stands presently, the PCI is not empowered to insist that the institution applying for approval to start D.Pharm course shall submit the consent of affiliation of the Examining Authority.

16. Needless to observe, the declaration supra shall be relevant and binding from the next academic session and any application which may be preferred by the petitioner – institution for the next academic session will need consideration on its own

merit.

17. The petition is partly allowed in the aforesaid terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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