

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3597/2023**

Date of Decision: **05.04.2023**

IN THE MATTER OF:

**PRAGATI COLLEGE OF PHARMACY
THROUGH PRAGATI WELFARE SOCIETY [REGD]
NEAR ANAJ MANDI SAMITI, MORADABAD ROAD,
KASHIPUR,
DIST. UDHAM SINGH NAGAR, UTTARAKHAND
THROUGH ITS SECRETARY DR TANU RATHORE**

..... PETITIONER

Through: Mr. Sanjay Sharawat, Mr. Ashok
Kumar and Mr. Nadeem Khan,
Advocates.

Versus

**PHARMACY COUNCIL OF INDIA
NBCC CENTRE, 3rd FLOOR,
PLOT NO.2, COMMUNITY CENTRE,
MAA ANANDAMAI MARG, OKHLA PHASE - I
NEW DELHI - 110020.
THROUGH ITS MEMBER SECRETARY**

..... RESPONDENT

Through: Mr. Mobashshir Sarwar, Standing
Counsel with Dr. Swaroop George and
Mr. Tanmay Cheema, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition under Article 226 of the Constitution of India has been

filed by the petitioner-institution to challenge the decision dated 11.11.2022 taken by the respondent-Pharmacy Council of India (PCI) in its 381st Executive Committee (EC) Meeting rejecting the application for grant of approval for B.Pharm course. The petitioner also prays for further directions to grant approval for B.Pharm course for the Academic Session 2023-24 expeditiously, in any case, before 10.04.2023. The said 381st EC meeting's minutes dated 11.11.2022 are also affirmed in an appeal *vide* order dated 02.02.2023.

2. Learned counsel appearing on behalf of the petitioner states that the petitioner-institution was granted approval by the respondent-PCI for operating D.Pharm course from Academic Session 2017-18. The petitioner from the Academic Session 2022-23 with an intention to operate B.Pharm course applied for grant of approval from the respondent-PCI. He further states that on 12.08.2022, the application of the petitioner-institution for grant of approval with respect to B.Pharm course was rejected on the ground of non submission of consent of affiliation of examining authority and also on account of non submission of NOC by the concerned State Government.

3. According to him, on 23.08.2022, the State Government of Uttarakhand issued NOC to the petitioner-institution for B.Pharm course and on 24.08.2022, the examining University issued consent of affiliation for B.Pharm course. He, therefore, states that on 25.08.2022, the petitioner-institution has submitted compliance appeal and uploaded both the NOC and the consent of affiliation on PCI's portal. He further states that however, on 11.11.2022, the respondent-PCI in its 381st EC meeting rejected the compliance appeal on the other grounds than the grounds for which the main application was rejected on 12.08.2022. He, therefore, filed a petition

bearing W.P. (C) No.16914/2022 which was disposed of by this court *vide* order dated 13.12.2022 directing the respondent-PCI to treat the writ petition as an appeal and to pass a reasoned order within a period of seven days.

4. Since, there was non-compliance of the order dated 13.12.2022 passed by this court in W.P. (C) No.16914/2022, the petitioner-institution filed Cont. Cas (C) No.121 of 2023 and on 02.02.2023, the respondent-PCI has tendered an unconditional apology and undertook to pass a reasoned order in compliance of directions given by this court on 13.12.2022.

5. On 02.02.2023 i.e. on the same date when the contempt case was disposed of, the respondent-PCI rejected the application of the petitioner-institution on the ground that last date for considering approval for Academic Session 2022-23 was already over. The petitioner-institution, however, filed another Cont. Cas (C) No. 224 of 2023 which came to be withdrawn on 16.03.2023 for the reason that the respondent-PCI had already passed a separate order on 02.02.2023.

6. Learned counsel appearing on behalf of the petitioner-institution, therefore, states that, this court under similar facts has directed for taking a fresh decision after extending opportunity of hearing for rectification of the defect for the Academic Session 2023-24. He has placed reliance on a decision passed by this court on 19.01.2023 in W.P. (C) No.422/2023 titled as '**Shri Girraj Maharaj College of Pharmacy vs. Pharmacy Council of India**' and other connected matters. He also states that the decision passed by this court was affirmed in LPA No.141/2023 *vide* order dated 24.02.2023. He further states that on the same date i.e. 19.01.2023, another batch of writ petitions i.e. W.P. (C) No.16769/2022 and other connected matters was also decided and this batch relates to the institutions who had applied for running

additional course for a particular Academic Session and the application for the additional course was rejected.

7. He then submits that on 23.01.2023 again, similar directions with respect to RS Memorial College of Pharmacy in W.P. (C) No.16445/2022 were issued and in addition, another petition bearing W.P. (C) No.1502/2023 was decided on 14.02.2023 involving similar controversy i.e. the application for running additional course i.e. B.Pharm by ongoing institution running some different course. He finally submits that the controversy involved in the instant case is covered by the decision passed by this court in different cases; and therefore, there is no reason not to grant similar benefit to the petitioner-institution directing the respondent-PCI to consider the application of the petitioner-institution, which was filed earlier relating to the Academic Session 2022-23, for grant of recognition for B.Pharm course for the Academic Session 2023-24.

8. Learned counsel appearing on behalf of the respondent-PCI has filed its counter affidavit and opposed the submissions made on behalf of the petitioner-institution. According to him, the instant case is not similar to the cases which have been decided by this court. He also states that on 02.02.2023 when a decision is taken by the respondent-PCI on the ground that the application of the petitioner-institution cannot be considered for the Academic Session 2022-23 on account of the expiry of the last date for considering approval for the said session, no interference is called for.

9. He also states that the respondent-PCI cannot consider the application submitted by the petitioner for the Academic Session 2023-24 for the grant of approval for the said session for additional reason that the petitioner-institution has already applied for the Academic Session 2023-24 by way of

filing a fresh application. He, therefore, states that, if this court directs the petitioner's application which was originally filed for the Academic Session 2022-23 to be considered for the Academic Session 2023-24, then there would be two considerations for the same Academic Session; one on the fresh application filed by the petitioner-institution and second on account of the directions to be given by this court. He further states that for one Academic Session 2023-24, there cannot be two separate considerations. Therefore, he justifies the decision dated 02.02.2023 and states that since the earlier decision dated 11.11.2022 is already merged with the decision dated 02.02.2023, therefore, no further directions are required.

10. I have heard learned counsel appearing for the parties and perused the record.

11. The admitted facts in the instant case are that the petitioner-institution did apply for grant of approval for B.Pharm course for the Academic Session 2022-23. The application of the petitioner was rejected by the respondent-PCI on 12.08.2022 on the ground that the petitioner-institution did not submit the consent of affiliation of examining authority and NOC from the concerned State Government. It is also not disputed that the petitioner did submit both the compliances before the respondent-PCI in the form of an appeal representation.

12. On 11.11.2022, the reason for rejection is different than the one mentioned in order dated 12.08.2022. The order of rejection of the original application dated 12.08.2022 reads as under:-

<u>EC No./Item No./ Institution Name/ ID/ Course</u>	<u>Examining Authority/ Hospital</u>	<u>Decisions of 372 EC (12.8.2022)</u>
372EC/312 UK-64/	<u>D.Pharm</u>	<u>D. Pharm-</u>

2022-2023 UTTARAKHAND Pragati College Of Pharmacy Near Anaj Mandi Samiti Moradabad Road Kashipur Distt Udham Singh Nagar PCI-1590 D.Pharm Course B.Pharm	The Secretary Uttarakhand Board of Tech. Education, Sunehra Road, Kashipuri Roorkee - 276 776, Distt. Haridwar.	D.Pharm course is already approved upto 2022-2023 academic session for 60 admissions. B.Pharm It was noted that institution has failed to submit consent of affiliation of Examining Authority and NOC of State Government for B.Pharm course. In view of above it was decided to reject the application for B.Pharm course.
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13. The reason for rejection of the appeal representation dated 11.11.2022 reads as under:-

<u>S. No.</u>	<u>EC No./Item No./ Institution Name/ ID/ Course</u>	<u>Examining Authority/ Hospital</u>	<u>EC decision</u>
227.	372 EC/312 UK-64/ 2022-2023 UTTARAKHAND Pragati College of Pharmacy Near Anaj Mandi Samiti Moradabad Road Kashipur Distt Udham Singh Nagar/ PCI-1590 D.Pharm Course B.Pharm	<u>D. Pharm</u> The Secretary Uttarakhand Board of Tech. Education, Sunehra Road, Kashipuri Roorkee- 276 776, Distt. Haridwar.	The latest information on record including appeal was placed and considered. It was noted that institution has failed to appoint faculty and facilities are not provided as per statutory provisions of- • Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014. • The Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014. In view of it, it was decided to reiterate the Council's

			earlier decision to reject the application for B.Pharm course.
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14. It is also not disputed that this court on 13.12.2022 directed the respondent-PCI to consider the case of the petitioner and to pass a reasoned order within a period of seven days.

15. The order dated 02.02.2023 which has been passed by the respondent-PCI rejecting the application of the petitioner is on the ground that the time for consideration of the application for the Academic Session 2022-23 is already over. A perusal of the facts and the order dated 02.02.2023 would clearly reveal that the case of the petitioner has not been considered by a reasoned order for grant of approval for Academic Session 2022-23 by the respondent-PCI.

16. The petitioner is also not insisting for grant of permission for the Academic Session 2022-23, the petitioner only prays for similar directions issued in other cases, where the decision of rejection of permission for the Academic Session 2022-23 was found to be illegal on merits and hence, the directions were given to consider those applications for the Academic Session 2023-24.

17. This court under similar circumstances has been passing directions which have been affirmed by the Hon'ble Division Bench also, where the PCI has been required to consider the similar applications for the Academic Session 2023-24 which were rejected for the grant of recognition for the Academic Session 2022-23. As stated above, such directions were issued in view of the facts that the reason of rejection of applications by PCI for the Academic Session 2022-2023 was found to be illegal. The same reasoning

equally applies under the facts of the present case.

18. Para 12 of the order dated 19.01.2023 passed in the case of ***Shri Girraj Maharaj College of Pharmacy (supra)*** reads as under:

“12. Having heard the learned counsel appearing on behalf of the parties, this court finds that the prayer of the petitioners deserve consideration. A perusal of the decision taken in respective meetings nowhere indicates as to which institution is deficient of what requirement. The decision so taken by the PCI is completely non-speaking. It was incumbent upon the PCI to have informed the institutions, with respect to the specific deficiencies, if any. Had it been done with opportunity to explain, those Institutions could have no grievances.”

19. In the aforesaid facts and circumstances, the instant writ petition is also disposed of with similar directions as has been issued in W.P. (C) 422/2023 and other connected matters *vide* order dated 19.01.2023 and modified directions of order of even date i.e. order dated 05.04.2023 in W.P.(C) 4137/2023 and other connected matters. It is, therefore, directed that the order dated 05.04.2023 passed in W.P.(C) 4137/2023 is applicable *mutatis mutandis* in the instant case also.

PURUSHAINDR KUMAR KAURAV, J.

APRIL 05, 2023

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