

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

+ **W.P.(C) 17074/2022**

Date of Decision: 17.02.2023

IN THE MATTER OF:

ZEE COLLEGE OF PHARMACY

THROUGH DIRECTOR PUSHPENDRA KUMAR JAIN,
KANPUR-LUCKNOW BYE-PASS,
GADANKHERA, DISTRICT-UNNAO,
UTTAR PRADESH, PIN-209 801.

....PETITIONER

Through: Mr.Mayank Manish and Mr.Ravi
Kant, Advocates.

versus

PHARMACY COUNCIL OF INDIA,

THROUGH REGISTRAR-CUM-SECRETARY,
NBCC CENTRE, 3RD FLOOR,
PLOT NO.2, COMMUNITY CENTRE,
MAA ANANDAMAI MARG,
OKHLA PHASE – I, NEW DELHI-110 020.

.... RESPONDENT

Through: Ms.Manisha Agrawal Narain and
Mr.Aniket Mookerjee, Advocates
for PCI.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition seeks to challenge the action of the respondent i.e. Pharmacy Council Of India (PCI) in not allowing the petitioner-institution to admit 100 students in B. Pharm Course for the academic session 2022-2023.

2. The facts of the case relevant to decide the instant petition are as

under:

- (i) The petitioner-institution is an on-going institution since 2019. The PCI had granted approval to the petitioner-institution for running B. Pharm Course with 60 intake capacity. There is no dispute with respect to operation of the said course.
 - (ii) The petitioner for academic session 2022-2023, with the object to enhance the intake capacity from 60 to 100, had applied to the PCI well in advance in the month of January 2022.
 - (iii) It is the case of the petitioner-institution that the required inspection etc. was conducted and *vide* decision of its Executive Committee, dated 25.07.2022, on non-existent grounds, the case of the petitioner-institution was rejected for increasing the intake capacity from 60 to 100. According to him, the only reason assigned for rejection of his case was that the petitioner-institution failed to submit the consent of the examining authority. Hence, the application for increasing the intake capacity was rejected.
 - (iv) The petitioner states that he preferred an appeal against the said order and the appellate authority *vide* order dated 11.11.2022, rejected the appeal on additional grounds, which were not even informed to the petitioner. He, therefore, states that the entire approach of the respondent- PCI is *dehors* the settled legal position that no adverse order should be passed unless an opportunity of hearing is granted.
3. Learned counsel appearing on behalf of respondent-PCI opposed the petition and she states that the last date for admission in B. Pharm Course was 30.11.2022, which has already expired. According to her,

unless the petitioner-institution is duly recognised, the same cannot be allowed to admit the students by way of interim measure. She states that such an approach has been deprecated by the Hon'ble Supreme Court in various pronouncements. She however, does not dispute that the reason for rejection of the appeal was not the reason in the original order. She states that as a matter of fact, the petitioner-institution does not fulfil the statutory requirements envisaged under Minimum Qualification for Teachers in Pharmacy Institutions Regulations 2014.

4. I have heard learned counsel appearing on behalf of the parties and perused the record.

5. The order in original dated 25.07.2022, reads as under:-

"Regarding raise in admission in B.Pharm course,
it was noted institution has failed to submit consent of examining authority. Hence application for raise in admission is rejected."

6. Extract of order in appeal i.e. 11.11.2022, reads as under:-

"Regarding institution's request for raise in admission in B.Pharm-

It was noted that institution has failed to appoint faculty, failed to maintain faculty cadre ratio and disburse salary as per statutory provisions of -

- *Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014.*
- *The Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014."*

7. It is thus seen that the impugned decision dated 11.11.2022 spells out additional reasons which admittedly have not been confronted with the petitioner-institution. It is also seen that at no point of time, the petitioner-institution was informed about any of the deficiencies existing in the petitioner-institution. It is thus seen that when the original order

was passed on some different grounds then the appellate authority ought not to have non-suited the petitioner on additional reason. The scope of appeal was to examine as to whether the petitioner-institution had the requisite consent from the affiliating University or not. Hence, the order passed by the appellate authority suffers from material illegality and therefore, the same is set aside.

8. Learned counsel appearing on behalf of the parties while pointing out order dated 19.01.2023, passed in *Shri Girraj Maharaj College Of Pharmacy v. Pharmacy Council Of India*¹ and other connected cases, state that almost similar controversy was dealt with in these cases. According to them, in that case, the decision of the PCI was interfered with by the court by granting liberty to the petitioner-institution to submit the explanation with regard to deficiencies, if any and PCI was further directed to take a final decision after considering the reply if any. They, therefore, state that this petition can also be disposed of with the similar directions.

9. Having heard learned counsel appearing on behalf of the parties and after considering the facts and circumstances of the case, this court finds it appropriate to dispose of the present petition with the following directions.

- (i) The decision in appeal dated 11.11.2022, (*Annexure P-1*) is hereby, set aside.
- (ii) The PCI is directed to issue notice pointing out specific deficiencies existing in the petitioner-institution, within a period of 21 days along with relevant inspection report, if any, being relied upon by PCI.

¹ W.P.(C) 422/2023

(iii) The petitioner-institution on receipt of the notice from the PCI, is directed to rectify the deficiencies, if any, and to submit its explanation to PCI within a period of 7 days thereafter.

(iv) Depending upon the submission/explanation by the petitioner-institution, PCI is directed to take a final decision within a period of 2 weeks thereafter, with respect to approval for the academic session 2023-2024.

(v) In case, PCI finds that the petitioner-institution is not fulfilling the requirement under relevant rules and regulations, the PCI is directed to specifically point out deficiencies in its decision so that the petitioner would be at liberty to take appropriate recourse in accordance with law.

10. With the aforesaid directions, the petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

FEBRUARY 17, 2023/MJ