

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3546 OF 2024

The Shetkari Shikshan Mandals

JI of PS & Research

Through Authorized Signatory

...Petitioner

Versus

Pharmacy Council of India

Statutory Body & Ors.

...Respondents

WITH

WRIT PETITION NO.3482 OF 2024

Anekant Education Societies College

of Pharmacy

...Petitioner

Versus

Pharmacy Council of India & Ors.

...Respondents

WITH

WRIT PETITION NO.4158 OF 2024

Agricultural Development Trust

School of Pharmacy & Research

Centre & Ors.

...Petitioner

Versus

Pharmacy Council of India & Ors.

...Respondents

WITH

WRIT PETITION NO.4179 OF 2024

Dhanshobha Foundations Dhanaji

Shelke College of Pharmacy & Ors.

...Petitioner

Versus

Pharmacy Council of India & Ors.

...Respondents

WITH
WRIT PETITION NO.4370 OF 2024

ALDEL Education Trusts,
through its Chairman ...Petitioner

Versus

Pharmacy Council of India & Ors. ...Respondents

AND
WRIT PETITION NO.5729 OF 2024

Dnyan Ganga Education Trust
Dnyan Ganga College of Pharmacy,
through Authorized Signatory ...Petitioner

Versus

Pharmacy Council of India & Ors. ...Respondents

Mr. A. V. Anturkar, Senior Advocate i/b. Mr. Amol G. Gatne for the
Petitioner in WP/3482/2024 & WP/5729/2024.

Mr. A. V. Anturkar, Senior Advocate i/b. Mr. Yatin Malvankar for
Petitioner in WP/3546/2024.

Mr. Rishikesh A. Mohite for the Petitioner in WP/4158/2024 &
WP/4179/2024.

Mr. Balkrishnan i/b. Mr. C. K. Thomas for the Petitioner in
WP/4370/2024.

Mr. N. C. Walimbe, Addl. G. P. a/w. Smt. P. B. Chavan, AGP for
Respondent-State in WP/3546/2024, WP/3482/2024, WP/4158/2024,
WP/4179/2024 & WP/4370/2024.

Mr. Mihir R. Govilkar for Respondent No.6 in WP/4370/2024.

Dr. Govind Sangwai i/c. Dy. Director, Directorate of Technical Educatio,
Maharashtra State, Mumbai present in the Court.

Mr. N. K. Rajpurohit, AGP for Respondent-State in WP/5729/2024.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

DATE : 2nd MAY 2024.

P.C. :-

1. The challenge raised in this group of Writ Petitions is to the communication dated 12th February 2024, issued by the Pharmacy Council of India (for short “PCI”), addressed to the Higher and Technical Education Department (for short “HTE”) of the State Government. By the said communication, the PCI has informed the HTE Department that no new permission should be granted to establish any new pharmacy institute or for an increase in intake or course in existing capacity of such institutes for the academic year 2024-25. A further instruction has been issued to Dr. Babasaheb Ambedkar Technological University not to grant permission to any new pharmacy institute or to increase the intake capacity of existing institutes. In this communication, there is a reference to an email dated 20th December 2023 that has been issued by the Principal Secretary, Government of Maharashtra on behalf of the HTE Department. In the said communication addressed to the President, PCI, it has been stated that there has been an unplanned increase in the number of pharmacy institutes in the State of Maharashtra in the academic years 2022-23 and 2023-24. Since it was noticed that there was an unplanned increase in the number of institutes which was likely to affect the quality standards and quality initiative which was required to be maintained, permission may not be granted to any new pharmacy

institute in the State for academic year 2024-25 without a comprehensive perspective plan being first prepared.

2. Mr. A. V. Anturkar, the learned Senior Advocate for the Petitioner submits that “no objection” of the State Government is not required for opening of a Pharmacy Institute for Diploma or a D.Pharm Course. Merely on the basis of the letter dated 20th December 2023, the PCI could not have refused to grant any permission to any new pharmacy institute or for considering the request for increasing the existing intake capacity. He invited our attention to the judgment of the Supreme Court in the case of *Pharmacy Council of India Vs. Rajeev College of Pharmacy & Ors.*¹ and submitted that the right to establish an Educational Institution is a fundamental right under Article 19(1)(g) of the Constitution of India. A reasonable restriction thereon could be imposed only by enacting a law and not on the basis of any executive instructions. In the present case, merely on the basis of the letter dated 20th December 2023 issued by the Principal Secretary, HTE, the PCI could not have issued the impugned communication dated 12th February 2024. He submits that the applications made for seeking permission to start new Pharmacy Institutes or for increasing intake capacity ought to be considered in accordance with the provisions of the Pharmacy Act, 1948 as well as the Regulations framed thereunder. It is thus prayed

¹ (2023) 3 SCC 502

that the impugned communication be stayed pending the consideration of the challenge.

3. The learned Additional Government Pleader has referred to the Affidavit-in-reply filed on behalf of the HTE Department. He seeks to support the issuance of the email dated 20th December 2023 by the Principal Secretary to urge that the object of the same was to control the unplanned growth in the number of Pharmacy Institutes. He further submits that the email dated 20th December 2023 is to operate for the academic session 2024-2025 and the PCI was justified in accepting such a request. He further submits that a direction has been issued for preparing a perspective plan for pharmacy education in the State of Maharashtra from 2025-2026 to 2030-2031. He, therefore, submits that no interim orders be passed.

4. *Prima-facie*, we find that merely on the basis of the email dated 20th December 2023 issued by the HTE Department, the PCI was not justified in issuing a blanket direction not to grant permission to any new pharmacy institute or to increase the intake capacity of existing institutes. The Supreme Court in the case of ***Pharmacy Council of India (supra)*** has held in clear terms in paragraph Nos.54 to 57 that on the basis of executive instructions, the fundamental right to establish an educational institution cannot be fettered. Imposing any reasonable restriction would require an action to be taken in accordance with law.

Although the object behind issuing the email dated 20th December 2023 could be stated to be laudable, the issuance of such email by itself cannot be the basis for PCI not to grant permission to any new institute at all.

5. For the aforesaid reasons, we find that a *prima-facie* case has been made out and hence, there shall be interim relief in terms of prayer clause (C) of Writ Petition No.3546 of 2024 which reads as under:-

(C) Pending final disposal of this Writ Petition, as and by way of interim relief, stay may be given to the effect and operation of the decision taken by the Pharmacy Council of India dated 12th February 2024 and the directions may be given that ignoring that decision dated 12th February 2024, Application made by the Petitioner Institution herein, for seeking the permission under the Pharmacy Act may be considered by the Respondent without being influenced by the impugned letter dated 12th February 2024, subject to the further order that may be passed by the Hon'ble Court within such time the Hon'ble Court may deem fit.

Said interim relief would operate in the companion Writ Petitions.

6. Stand over to **27th June 2024** to enable the Respondents to file their affidavits-in-reply.

7. The parties to act on an authenticated copy of this order.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]