

The Pharmacy Council Of India vs Dr.S.K.Toshniwal Educational Trusts ... on 5 March, 2020

Equivalent citations: AIR 2021 SUPREME COURT 843, AIRONLINE 2020 SC 335

Author: M. R. Shah

Bench: M. R. Shah, Vineet Saran, Arun Mishra

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REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL/APPELLATE JURISDICTION

TRANSFERRED CASE (CIVIL) NOS.....OF 2020
[TRANSFER PETITIONS (CIVIL) NOS. 87-101 OF 2014]

The Pharmacy Council of India

.. Petitioner

Versus

Dr. S.K. Toshniwal Educational Trusts
Vidarbha Institute of Pharmacy and Ors. Etc.

.. Respondents

WITH

C. A. Nos. 2024-27 of 2020 [SLP (C) NO.4124-4127 OF 2016]
C. A. Nos. 2028-31 of 2020 [SLP (C) NO.26480-26483 OF 2017]
C. A. No. 2032 of 2020 [SLP (C) NO.25160 OF 2017]
C. A. No. 2035 of 2020 [SLP (C) NO.608 OF 2018]
C. A. No. 2036 of 2020 [SLP (C) NO.606 OF 2018]
C. A. No. 2033 of 2020 [SLP (C) NO.9547 OF 2018]
C. A. No. 2034 of 2020 [SLP (C) NO.9546 OF 2018]
C. A. No. 2037 of 2020 [SLP (C) NO.9572 OF 2018]
C. A. No. 2039 of 2020 [SLP (C) NO.1171 OF 2018]
C. A. No. 2038 of 2020 [SLP (C) NO.1151 OF 2018]
C. A. No. 2040 of 2020 [SLP (C) NO.36434 OF 2017]
C. A. No. 2041 of 2020 [SLP (C) NO.26391 OF 2018]
WRIT PETITION (C) NO.926 OF 2018
C. A. No. 2042 of 2020 [SLP (C) NO.26373 OF 2018]

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JAYANT KUMAR ARORA
Date: 2020.03.05

C. A. No. 2043 of 2020 [SLP (C) NO.15328 OF 2019] &
16:42:02 IST
Reason:

WRIT PETITION (C) NO.1501 OF 2019

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JUDGMENT

M. R. Shah, J.

Transfer Petitions (Civil) Nos. 87-101 of 2014 are allowed and Writ Petition Nos. 3783 of 2013 – Dr. S. K. Toshniwal Educational Trust’s Vidarbha Institute of Pharmacy vs. The State of Maharashtra & Ors., W.P. No. 3945 of 2013 – Young Engineer’s Education Society vs. The State of Maharashtra & Ors. pending in the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, W.P. No. 4992 of 2013 – The Shirpur Education Society & Anr. vs. The State of Maharashtra & Ors., W.P. No. 5104 of 2013 – Shri Bhagwan College of Pharmacy vs. The State of Maharashtra & Ors., W.P. No. 5150 of 2013 – Kiran & Ors. vs. The State of Maharashtra & Ors., W.P. No. 5681 of 2013 – Yashodabai Dagadu Saraf Charitable Trust & Anr. vs. The State of Maharashtra & Ors., W.P. No. 5914 of 2013 – Nagaon Education Society’s Institute of Pharmacy, Nagaon vs. The State of Maharashtra & Ors. pending in the High Court of Judicature at Bombay Bench at Aurangabad, W.P. No. 19253 of 2013 – Aldel Education Trust vs. All India Council for Technical Education, W.P. 19254 of 2013 – Shikshan & Krushi Vikas Pratishthan Medshingi vs. All India Council for Technical Education & Ors., W.P. 19255 of 2013 – K.B.H.S.S. Trust vs. All India Council for Technical Education & Ors. pending in the High Court of Judicature at Bombay, W.P. No. 19887 of 2013 – The Shirpur Education Society & Anr. vs. The State of Maharashtra pending in the High Court of Judicature at Bombay Bench at Aurangabad, W.P. No. 25857 of 2013 – St. Mary’s Group of Institutions Hyderabad vs. The Pharmacy Council of India & Ors., W.P. No. 26077 of 2013 – B. Sridhar & Ors. vs. The Pharmacy Council of India & Ors., W.P. No. 26286 of 2013 – St. Mary’s Group of Institutions Guntur vs. The Pharmacy Council of India & Ors. pending in the High Court of Judicature at Andhra Pradesh at Hyderabad and W.P. 1388 of 2013 – Kashi Institute of Pharmacy v. Union of India & Ors. pending in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow are transferred to this Court.

2. Leave granted in the Special Leave Petitions.

3. As common question of law and facts arise in this group of cases, all these cases are being decided together by this common judgment and order.

4. In all these petitions, respective respondent-Colleges approached the respective High Courts with the grievance regarding actions of approval of the second shift by the Pharmacy Council of India (hereinafter referred to as the PCI) and restriction on increasing the intake capacity of students for various pharmacy courses. Since the respective respondent Colleges increased the intake of students, based upon the requisite permission/approval obtained from the All India Council of Technical Education (hereinafter referred to as the AICTE), the respective High Courts have allowed the colleges to increase/continue with the increase in intake. The respective High Courts have concluded that AICTE is the supreme authority between the two bodies, namely, AICTE and PCI and the decision of AICTE will prevail over the decision of PCI. That, by the interim orders, the High Court allowed the Institutions to continue with the increased number of intake as approved/permitted by AICTE. That, in some of the cases, such interim orders have been made absolute. Therefore, the issue involved in the present batch of cases is regarding the applicability of the Pharmacy Act, 1948 (hereinafter referred to as the Pharmacy Act) or the All India Council of Technical Education Act, 1987 (hereinafter referred to as the AICTE Act) in relation to the subject of Pharmacy, including approval of courses of study, minimum standards of education required for qualification as a Pharmacist, registration as a Pharmacist, regulation of future professional conduct etc. SUBMISSIONS OF PCI

5. Shri Maninder Singh, learned Senior Advocate appearing on behalf of PCI has vehemently submitted the following arguments:

5.1 That having regard to the statutory scheme contained in the Pharmacy Act, which is a complete code by itself dealing with the subject of pharmacy, the jurisdiction for regulating the standards of education in the subject of pharmacy and subsequent professional conduct of pharmacists vests entirely in the PCI and AICTE does not have any jurisdiction or power in this behalf.

5.2 That, as such, the issue involved in the present batch of cases is now not res integra and is clearly covered by the decision of this Court in the case of AICTE v.

Shri Prince Shivaji Maratha Boarding House's College of Architecture (2019) SCC Online SC 1445 = (2019) 16 SCALE 421. It is submitted that, in the said case, while dealing with an identical statutory scheme in the case of Council of Architecture constituted under the Architects Act, 1972, this Court has held that even when the definition of "technical education" in Section 2(g) of the AICTE Act also uses the word "architecture", the said word would have to be dropped from the definition of "technical education" and shall be treated as inapplicable in cases where AICTE imports its regulatory framework. It is further submitted that, in that case, it is held that insofar as recognition of degrees and diplomas of architecture education is concerned, the Architects Act, 1972 would prevail and that AICTE shall not be entitled to impose any regulatory measure in connection with the degrees and diplomas in the subject of architecture. Heavy reliance has been placed upon paragraphs 67 to 70 of the said decision.

That, in the said decision, this Court considered the entirely identical statutory scheme contained in the Architects Act, 1972 and therefore the same would squarely apply for interpretation of the

Pharmacy Act as well. It is submitted that even in the case of pharmacy, the stand of AICTE is based solely upon the user of the word “pharmacy” in the definition of “technical education” in Section 2(g) of the AICTE Act. It is submitted that having regard to the law laid down by this Court in the aforesaid decision, as well as the statutory scheme under the Pharmacy Act, the said word “pharmacy” would deserve to be dropped from the definition of “technical education” under Section 2(g) of the AICTE Act and would deserve to be held to be inapplicable in relation to the regulatory measures for prescribing minimum standards for education in the field of pharmacy. 5.3 That even otherwise and having regard to the statutory scheme under the Pharmacy Act, which is a complete code and a special law in relation to subject of pharmacy, PCI is empowered to not only regulate the profession of Pharmacy, but also the educational institutions from which persons may obtain the qualification as a pharmacist and that AICTE does not have any jurisdiction in that behalf. 5.4 That pharmacy is the profession of preparing, preserving, compounding and dispensing medical drugs. It is submitted that, under the Pharmacy Act, the PCI has been constituted as a body empowered to regulate the education and profession of Pharmacy in India. It is submitted that PCI has been empowered to determine and enforce the qualifications required for a person to practice as Pharmacist in India, including approving courses of study and institutions which may offer such courses of study to enable one to practice the profession of a pharmacist. Relying upon the Statement of Objects and Reasons of the Pharmacy Act, it is vehemently submitted by the learned Senior Advocate appearing for PCI that PCI is supposed to prescribe the minimum standards of education and approve courses of study for pharmacists.

5.5 That pharmacy is one of the several disciplines/subjects where the Legislature has laid down that for imparting education in that subject, the minimum standards are to be prescribed by an autonomous statutory body comprising of eminent professionals in the field. It is submitted that they not only prescribe the standard of education of different courses in the discipline/subject, they also lay down eligibility conditions for students as well as teachers, course content, standards for evaluation of examination etc. It is submitted that they also approve the courses in the subject in colleges/institutions on the basis of the laid down norms by verification by inspections. It is submitted that the law also deals with the registration of the professionals in that discipline as well as their subsequent conduct as registered professionals.

5.6 That it is very much important and/or necessary that the autonomous statutory authority which is made obliged to supervise and monitor the conduct of professionals by the Legislature in a particular discipline is also given a free hand to decide about the standards of education, approval of courses/institutions evaluation of standards of examination and thereafter grant of registration. 5.7 That the Legislature has clearly envisaged only one autonomous statutory authority to undertake all these integrated functions and it is impossible to conceive that in the same very occupied field, another statutory authority, seeks to assume/usurp jurisdiction thereby creating unsavory practical problems, conflicts and inconsistencies, thereby defeating the entire objective sought to be achieved by the Special Law.

5.8 That subject of Pharmacy is a special and not a general subject. It is submitted that it has been exhaustively dealt with by the Parliament through the Pharmacy Act which exhaustively covers all areas inclusive of approval of courses, laying down course content, eligibility conditions for students

as well as teachers, evaluation of standards of examination, grant of registration, taking action for any infamous conduct etc. It is submitted that this entire legislative objective is achieved through the Pharmacy Act and the statutory rules and regulations made thereunder.

5.9 That Section 10 of the Pharmacy Act empowers the PCI to frame Education Regulations prescribing the minimum standards of education required for qualification as a pharmacist. It is submitted that as per Section 10(2), such 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.

5.10 That the power to approve courses of study and examination is contained in Section 12 of the Pharmacy Act. It is submitted that under this provision, any “authority” in a State that is empowered to conduct a course of study in pharmacy may apply to the Central Council for approval of the course in accordance with the Education Regulations. It is further submitted that likewise, any authority which conducts an examination in a State for pharmacy may apply to the PCI for approval of such examination. It is submitted that a student who has passed/completed an approved course and passed an approved examination may therefore be registered as a Pharmacist, subject to meeting other requirements. It is submitted that therefore, under the Pharmacy Act, the approval of PCI in conducting any course of pharmacy is mandatory and, in the absence of the same, no student can be awarded the degree or diploma for such a course which makes him entitled for registration as a pharmacist to practice the profession of pharmacy in the country. It is submitted that Section 12(1) of the Pharmacy Act empowers the PCI to grant approval to an Institution which conducts a “course of study” for pharmacist. It is submitted that, as per Section 12, an application has to be made to the Central Council seeking approval which after such enquiry, as it thinks fit to make, that the said course of study is in conformity with the Education Regulations envisaged under Section 10 prescribing the minimum standard of education required for qualification as a pharmacist, shall declare the said course of study for the purpose of admission to be an approved examination for pharmacists. 5.10.1 That Section 13 of the Pharmacy Act also empowers the Central Council to withdraw approval accorded to the ‘course of study’ and ‘examination’ for failure to comply with the prescribed norms.

5.10.2 That Section 16 empowers the Executive Committee to appoint inspectors to inspect any institution which provides an approved course of study or those institutions which apply for approval of course of study or examination. 5.10.3 That Section 29 deals with the preparation and maintenance of a register of pharmacists. Section 35 provides for entry of additional qualifications in the register in relation to any registered pharmacist. Section 36 provides for the removal of any person from the register, either permanently or for a temporary period. That it is evident therefore

that PCI does not just regulate the provisions itself, but also plays a vital role in regulating entry into the profession by approving the courses and examination which constitute appropriate qualifications to be registered as a pharmacist under Section 32(2). It is submitted that under Section 42 of the Pharmacy Act, a person may not practice the profession of pharmacy unless he or she is registered as a pharmacist in accordance with the Pharmacy Act and Section 42(2) is a penal provision which states that any person who is not a registered pharmacist and contravenes Section 42(1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

5.11 That in exercise of powers vested in it under the Pharmacy Act, the PCI has framed a number of Regulations for prescribing minimum standards of education as well as regulating the subject of pharmacy in India, including:-

- a. Education Regulations, 1991;
- b. Pharm. D. Regulations, 2008;
- c. Minimum Qualifications for Teachers in Pharmacy Institutions Regulations, 2014;
- d. Bachelor of Pharmacy (B. Pharm) Course Regulations, 2014;
- e. Master of Pharmacy (M.Pharm) Course Regulations, 2014;
- f. Bachelor of Pharmacy (Practice) Regulations, 2014;
- g. Pharmacy Practice Regulations, 2015.

5.12 That the aforesaid statutory scheme clearly demonstrates that the field of Pharmacy is fully occupied with all details and is all pervasive. It is submitted that it is fully covered and governed not only by the provisions of the Pharmacy Act, but also supplemented by the statutory Rules and statutory Regulations made thereunder; thereby providing a complete code on the subject of Pharmacy. 5.13 That the legislative intent in enacting the Pharmacy Act was to ensure that there is seamless regulation of the profession, both in terms of the qualifications required to be registered as a pharmacist and the actual practice of pharmacy as a profession. It is submitted that the same scheme has been adopted by the Parliament with respect to, inter alia, the legal profession (Bar Council of India), medical profession (Medical Council of India), architects (Architecture Council of India), nursing (Nurses Council of India) and dentistry (Dental Council of India). It is submitted that therefore the Pharmacy Act is a special law dealing with the subject/field of pharmacy.

5.14 That, on the other hand, the AICTE Act is merely to ensure that the standards are maintained in the area of technical education and that it is not intended to take over all aspects of the regulation of specialized education in India for which specialized regulatory bodies already operate under their respective laws. It is submitted that a perusal of the Statement of Objects and Reasons of the AICTE Act demonstrates that AICTE had been for assisting and guiding the Central Government in relation to policies on the subject of engineering and similar technical subjects. That it has not been created to dilute, in any manner whatsoever, the autonomy and authority of other statutory bodies. It is

submitted that it does not oversee any course which requires registration of professionals and their conduct. That it has no jurisdiction whatsoever on the subject of medicine, dentistry, architecture as well as pharmacy.

5.15 That the scope of powers of the AICTE and the legislative intent behind the AICTE Act has been explained by this Court in the case of *Bharathidasan University v. All-India Council for Technical Education* (2001) 8 SCC 676. Heavy reliance has been placed on Paragraphs 8 and 10.

5.16 That therefore the legislative intent behind the AICTE Act is therefore clear. It is not intended to replace or supersede existing regulatory bodies, but rather was intended to focus on coordinating and improving the standards of technical education across the country in an advisory capacity. It is submitted that therefore in the regulation of Pharmacy education, PCI continues to be the regulator of the educational institutions under the Pharmacy Act. That in relation to regulation of educational institutions in the field of Pharmacy, the provisions of the Pharmacy Act being a Special Law dealing with the subject of “Pharmacy” would prevail over the AICTE Act, being a General Law for “technical education”. 5.17 That even otherwise the Pharmacy Act being a special law on the subject of Pharmacy would prevail over the AICTE Act. It is submitted that it is a settled position of law that a special law dealing with any subject would prevail over the general law which may be dealing with the said subject only incidentally. That this principle of law is also enshrined in the maxim *generalia specialibus non derogant*. It is submitted that it is an exception to the principle that a latter statute would prevail over an earlier statute. It is submitted that therefore an earlier Special Law would prevail over a later General Law. In support of the above submissions, heavy reliance has been placed upon the decisions of this Court in the cases of *UPSEB v. Hari Shanker Jain* (1978) 4 SCC 16; *LIC of India v. D.J. Bahadur* (1981) 1 SCC 315 and *Yakub Abdul Razak Memon v. State of Maharashtra* (2013) 13 SCC 1.

5.18 Relying upon the above decisions, it is urged that even in case of any conflict, the Pharmacy Act being a special law dealing with the special subject of pharmacy would prevail over the AICTE Act being a general law in the field of technical education.

5.19 That even the submission on behalf of the respondents based on the principle of ‘implied repeal’ are entirely misconceived and erroneous. It is submitted that it has been held by this Court in the case of *Municipal Council v. T.J. Joseph* (1964) 2 SCR 87 that when two laws are made by the Legislature at different points of time, dealing with the same subject matter, there is no presumption that the later law impliedly repeals the earlier law. Heavy reliance is also placed upon the decision of this Court in *Byram Prestonji Gariwala v. Union Bank of India* (1992) 1 SCC 31. That in the aforesaid decision, it is held by this Court that any fundamental change/alteration in law cannot be presumed by applying the principle of “implied repeal”. That it is held that any fundamental change/alteration in law, can only be carried out by explicit words, and not “by a sidewind”. That therefore, in the aforesaid decision, the contention based on the principle of “implied repeal” has been rejected.

5.19.1 That therefore having regard to the Statement of Objects and Reasons as well as the scheme of the AICTE Act, as also explained in para 8 of the judgment in *Bharthidarsan* case (*supra*), it is abundantly clear that the Parliament has not intended to fundamentally alter the existing regime

where – from the stage of prescribing the minimum standards of education, approving the courses of study to the stage of registration and future monitoring of professional conduct of pharmacist the Pharmacy Act vests the PCI with such jurisdiction and power.

5.19.2 That as such the AICTE Act cannot be treated to have, in any manner whatsoever, affected the jurisdiction and power of the PCI in this behalf. It is submitted that therefore AICTE Act cannot be held to have “implied repealed” the Pharmacy Act and any contention to the contrary would deserve to be rejected by this Court.

5.19.3 That in the absence of any express or implied legislative intent, the AICTE Act cannot be held to have repealed the Pharmacy Act and on the contrary, the provisions of the Pharmacy Act, being a special law dealing comprehensively with the subject of Pharmacy, would prevail over the AICTE Act. 5.20 This Court while disposing of SLP (c) Diary No. 24798 of 2018 – Progressive Education Society’s College of Pharmacy v. State of Maharashtra (dated 24.07.2018) has observed that “it is desirable that the Government of India should revisit the definition in Section 2(g) of the AICTE Act. Whether there could have been inclusion of pharmacy when it was already converted by the Pharmacy Act”. It is submitted that in fact thereafter in a inter-Ministerial meeting held on 30.09.2019 between the Minister of Health and Family Welfare, Government of India and Minister of HRD, Government of India, a decision has been taken that the word “pharmacy” would be deleted from the definition of “technical education” under the AICTE Act. However, the said amendment is still to be carried out. It is submitted that even the proposed Higher Education Commission of India Bill, 2019, which seeks to repeal the UGC and AICTE Acts and the Allied and Healthcare Professions Bill, 2018, which seeks to bring into existence a regulatory mechanism for 53 allied and healthcare professions such as physiotherapists, radiologists, nutritionists etc., have no relation whatsoever with the PCI. It is submitted that all the four Councils dealing with Medicine, Dentistry, Pharmacy and Nursing would continue to discharge their respective duties and activities under special enactments.

5.21 That the submission of the respondent Colleges and the AICTE Act to the effect that PCI can regulate only the grant of Diploma in Pharmacy and not the further courses/qualifications, is absolutely erroneous, misconceived and unsustainable in law in view of the specific provisions under Sections 12 and 35 of the Pharmacy Act. It is submitted that Sections 12 and 35 makes it abundantly clear that it is all courses in relation to pharmacy which get covered by the scheme of the Pharmacy Act.

5.22 That the primary reason of conflict between the AICTE and PCI was on account of AICTE permitting colleges to double the intake capacity for courses where the intake capacity had been fixed by the PCI, and also on account of AICTE permitting the second shift (evening classes) contrary to the regulations of PCI.

5.23 That even recently a public notice has been issued by the AICTE which informs that AICTE is still inviting applications for grant of approval for courses of Architecture, despite the decision of this Court in Shri Prince Shivaji Maratha Boarding House’s College of Architecture (supra). That therefore even the said public notice is in the teeth of this Court’s judgment and order and the same

is nothing but deliberate disobedience of the decision of this Court. 5.24 Making the above submissions and relying upon the above decisions, it is prayed to allow the present petitions and hold that the PCI possesses the jurisdiction and power to regulate the education as well as practice of profession of pharmacy in relation to all its aspects and AICTE would not have any jurisdiction or power in that regard. It is also prayed to hold that the word “pharmacy” in Section 2(g) of the AICTE Act deserves to be treated as inapplicable in relation to the regulation of education and practice of profession in pharmacy. SUBMISSIONS OF AICTE

6. Shri Harish Panday, learned counsel appearing on behalf of the AICTE has raised the following submissions:

6.1 That AICTE was originally set up in the year 1945 by a Government resolution as a National Expert Body to advise Central and State Government for ensuring the coordinated development and technical education in accordance with approved standards and was playing effective role. It is submitted that taking into account the growing erosion of standard and pursuant to recommendation, a National Working Group was set up in November 1985 to look into the role of AICTE. In order to enable the AICTE to play its role effectively, it was recommended that council should be given the statutory power. The National Policy of Education 1986 also stipulated that Council will be vested with statutory power. A Bill was introduced to ensure proper planning and coordinated development of Technical Education system in the country. It is submitted that the AICTE Act has been enacted with an object to provide for the establishment of an AICTE with a view to proper planning and coordinated development of the technical education system throughout the country; the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. It is submitted that the power and functions assigned to AICTE is not only to prescribe norms and standards but to inspect, approve and withhold recognition of programmes and institutes.

6.2 That Section 2(g) of the AICTE Act defines ‘technical education’ and it includes “pharmacy”. Learned counsel on behalf of AICTE has taken us through various provisions of the AICTE Act and it is submitted that therefore the AICTE Act has been enacted for regulating and fixing minimum standard for technical education and education institutions in the field of technical education, as defined in Section 2(g) of the AICTE Act. It is submitted that the AICTE Act has been given all powers for fixing the minimum qualification and standards and regulating institutions and in case of failure to comply with its rules and regulations, power to take action, including withdrawal of the approval.

6.3 That so far as the Pharmacy Act is concerned it is a pre-Constitution Act which was enacted in the year 1948 with the primary object to make better provisions for regulation of the profession and practice of pharmacy and for that purpose to

constitute Pharmacy Council. It is submitted that perusal of the object, aim and provisions of the Pharmacy Act makes it clear that the Pharmacy Act which is a prior Act has been primarily enacted to regulate the professionals only.

It is submitted that in the year 1987, AICTE has been given the statutory status with the sole authority to regulate and prescribe minimum norms and standard for Technical Education and technical instructions as defined under the AICTE Act. It is submitted that after coming into AICTE Act, it is entirely within the domain of the AICTE Council to grant approval to a new course or to recognize a new institute.

6.4 That the Legislature in its own wisdom has included Pharmacy in the definition of 'technical education' in the AICTE Act and given AICTE powers to maintain the norms and standard of technical education for proper and coordinated development of technical education.

6.5 That the language of AICTE Act is plain and unambiguous and therefore the court shall not interpret the same in a different manner only because a harsh consequence arising therefrom. Reliance is placed upon the case of Nasiruddin v. Sita Ram Agarwal (2003) 2 SCC 577.

6.6 That deleting the word "Pharmacy" from AICTE Act which has specifically been incorporated by the Legislature will amount to legislate which is not permissible, as held by this Court in the case of Union of India v. Deoki Nandan Aggarwal (1992) Supp. 1 SCC 323. It is submitted that, as held by this Court, the courts cannot rewrite, recast or reframe the legislation. 6.7 That as held by this Court in the case of Ajeet Singh Singhvi v. State of Rajasthan 1991 Suppl. (1) SCC 343, the courts should always presume that the Legislature inserted every part of the statute for a purpose and the legislative intention is that every part of the statute should have effect. It is further submitted that as held by this Court in the case of Ajoy Kumar Banerjee v. Union of India (1984) 3 SCC 127, the later law will prevail. It is submitted that therefore the AICTE Act, which is a later Act, shall prevail over the Pharmacy Act. 6.8 That Article 372 of the Constitution provides that notwithstanding the repeal by the Constitution of the enactments referred to in Article 395, all the laws that were in force in the territory of India immediately before the commencement of the Constitution shall continue to remain in force until altered or repealed or amended by a competent Parliament under Entry-66 of List-I (Union List). It is submitted that AICTE Act has been enacted by the Parliament under the Union List, which covers the same field which was earlier covered by the 1948 Act, namely, to lay down norms and standards for studies in the field of pharmacy. It is submitted that therefore in terms of Article 372 of the Constitution, the 1987 Act to the extent it covers the same field as covered by the existing law i.e. 1948 Act, will prevail and the provisions of the 1948 Act to that extent stand repealed/altered.

7. So far as the reliance placed upon by the learned counsel for the petitioner on the decision of this Court in the case of Bharthidarsan (supra) is concerned, it is submitted that the said decision shall not be applicable at all to the facts of the case on hand. It is submitted that the dispute was with regard to the powers of UGC and AICTE vis.a.vis the Universities and in the definition of 'technical institution' under Section 2(h) of the AICTE Act, Universities have been excluded and therefore this Court held that AICTE has no jurisdiction over the Universities. It is submitted that whereas

Pharmacy has been purposely included in the definition and under various sections of AICTE Act.

7.1 So far as the reliance placed upon the decision of this Court in the case of Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra) by the learned Senior Advocate appearing on behalf of PCI is concerned, it is submitted that the reliance placed on the said decision is mis-placed as it primarily relies on the decision of this Court in the case of Association of Management of Private Colleges v. All Indian Council for Technical Education (2013) 8 SCC 385 without appreciating the fact that the issue involved in that aforesaid judgment has been referred to a larger Bench.

7.2 That even otherwise there is a difference in the provisions between the Architect Act and the Pharmacy Act.

7.3 That the AICTE Act, 1987 is a later Act than the Pharmacy Act, 1948 and is a special enactment for laying down norms and standards for courses, curriculum, physical and instructional facilities, staff pattern, staff qualification, quality instructions, assessment and examination in technical education as well as granting approval for starting new technical institution, introduction of new courses or variation in intake in the existing courses. It is submitted that therefore on the principle of "implied repeal" the provisions of AICTE Act would prevail over the Pharmacy Act.

7.4 That pursuant to order passed by this Court in the case of Progressive Education Society's College of Pharmacy (supra) in a meeting between Minister of Health and Family Welfare and Minister of Human Resource Development it was decided to revisit the definition of 'technical education' in the AICTE Act by deleting "Pharmacy" from the definition of 'technical education' contained in Section 2(g) of the AICTE Act. It is submitted that, however, it was decided that till the time it was amended both councils will inspect jointly for the purpose of grant of Approval and both parties will withdraw cases filed by them. It is submitted that both councils will regulate simultaneously. 7.5 Making the above submissions, it is prayed to answer the questions/issue involved in favour of AICTE and hold that the provisions of AICTE Act would prevail over the Pharmacy Act.

OTHER SUBMISSIONS

8. Learned counsel appearing on behalf of respondent No. 5 in SLP (C) Nos. 4124-4127 of 2016, as such, supported the stand of AICTE. It is submitted that attempts should be made that both the Pharmacy Act and AICTE Act are harmoniously construed and the attempts should be made to reconcile both the provisions.

8.1 Learned counsel appearing on behalf of respondent No. 5 has submitted that respondent No. 5 does not dispute the authority of PCI to prescribe, approve and regulate the course of study and examination prescribed to register as pharmacist. It is submitted that, however, the PCI has limited role and powers and also its powers are limited to the Diploma in Pharmacy and not other courses. It is submitted that the Pharmacy Act does not give direct control to the PCI over the Institutions. It is submitted that such a lacuna is filled by the AICTE Act. 8.2 It is further submitted that insofar as

the seat intake is concerned, the Education Regulation, 1991 lays down some of the infrastructural facilities required for the diploma courses in Pharmacy course. It is submitted that AICTE is empowered to decide on seat intake increase on fulfillment of infrastructural requirements. It is submitted that therefore when there will be full compliance on the infrastructural requirements laid down in the Education Regulations, still AICTE can insist on any other compliance as per its own norms. It is submitted that for the purpose of regulating the profession of pharmacy, course for study and examination, PCI will have supremacy and on other matters AICTE and its regulations would prevail. It is submitted that insofar as the profession of pharmacy is concerned, the Pharmacy Act is a Special Act. It is submitted that insofar as regulating the technical institution, AICTE is the Special Act and therefore the same shall prevail.

8.3 Making the above submissions, it is prayed that the intake of the seats approved by the AICTE in respect of respondent No. 5 Institution may kindly be protected.

9. Learned counsel appearing on behalf of the respective Institutions have further submitted that by interim orders which in some cases were final, the respective institutions are permitted to increase intake as per the decision of AICTE and the students have studied and the interim orders were passed by the High Courts in the interest of students, therefore, whatever be the outcome of the respective cases, the interest of the students and the institutions may be protected.

10. In rejoinder, it is submitted by the learned Senior Advocate appearing on behalf of the PCI that as such the provisions of the Architects Act, 1972 and the provisions of the Pharmacy Act, 1948 are similar and para materia, except the non-obstinate clause in Section 17. It is submitted that, however, a bare perusal of Section 17 of the Architects Act makes it abundantly clear that the said provision does not have any relation or bearing whatsoever with the power of the Council of Architecture to prescribe the minimum standards of education in the field of architecture and the said non-obstinate provision is only with regard to the registration i.e. to say for practicing architecture, registration under the Architects Act would be mandatory. It is submitted that therefore non-existence of any such similar provision in the Pharmacy Act is of no consequence or impact for adjudication of the issue involved in the present case.

11. Now, so far as reliance placed upon Article 372 of the Constitution by the learned Advocate appearing on behalf of the AICTE, it is vehemently submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the PCI that even as per Article 372 of the Constitution, unless a pre-constitutional statute is specifically repealed, it continues to remain in operation. That, in the present case, in the absence of any repeal of the Pharmacy Act, 1948, it continues to remain in operation in India.

OUR CONSIDRATION:

12. As observed hereinabove, the issue involved in the present batch of cases is regarding the applicability of the Pharmacy Act, 1948 or the AICTE Act, 1987 in relation to subject of pharmacy including the approval of courses of study, minimum standards of education required for qualification as a pharmacist, registration as a pharmacist, regulation of future professional conduct

etc. In other words, the question is as to whether the mandate of the PCI or that of the AICTE would prevail on the question of granting approval and related matters to any institution for conducting pharmacy education course, if there is any conflict/contradictions in the opinions of these two bodies. The issue is as to which body, i.e. AICTE or PCI would primarily be responsible for regulation of pharmaceutical regulation in India.

13. While answering the issues/questions involved in the present batch of petitions, first of all, what is required to be considered is whether the Pharmacy Act which is a prior Act to that of AICTE Act can be said to be a special Act with special provisions in the field of Pharmacy? The Statement of Objects and Reasons for the Pharmacy Act is as under:

“It is desirable that, as in most other countries, only persons who have attained a minimum standard of professional education should be permitted to practise the Profession of Pharmacy. It is accordingly proposed to establish a Central Council of Pharmacy, which will prescribe the minimum standards of education and approve courses of study and examinations for Pharmacists, and Provincial Pharmacy Councils, which will be responsible for the maintenance of provincial registers of qualified pharmacists. It is further proposed to empower Provincial Governments to prohibit the dispensing of medicine on the prescription of a medical practitioner otherwise than by, or under the direct and personal supervision of, a registered pharmacist.” As per the Preamble of the Pharmacy Act, 1948, the Pharmacy Act has been enacted to make better provision for the regulation of the profession and practice of Pharmacy and for that purpose to constitute Pharmacy Councils. If we consider the relevant provisions of the Pharmacy Act, it covers all areas inclusive of approval of courses, laying down course content, eligibility conditions for students as well as teachers, evaluation of standards of examination, grant of registration, entry of higher qualification, taking action for any infamous conduct etc. The relevant provisions in the Pharmacy Act are Sections 10, 12, 13, 16, 29, 32, 35, 36 and 42.

13.1 Section 10 of the Pharmacy Act empowers the PCI to frame Education Regulations prescribing the minimum standard of education required for qualification as a pharmacist. As per sub-section (2) of Section 10, such 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.

As per Section 12 of the Pharmacy Act, any “authority” in a State that is empowered to conduct a course of study in pharmacy may apply to the Central Council for approval of the course in accordance with the Education Regulations.

Likewise, any authority which conducts an examination of a State for pharmacy may apply to the PCI for approval of such examination. A student who has passed/completed an approved course and passed an approved examination can only be registered as a Pharmacist subject to meeting other requirements. Section 13 of the Pharmacy Act empowers the Central Council to withdraw approval accorded to the ‘course of study’ and ‘examination’ for failure to comply with the prescribed norms. Section 16 of the Pharmacy Act empowers the Executive Committee to appoint inspectors to inspect any institution which provides an approved course of study or those institutions which apply for approval of course of study or examination. Section 29 deals with preparation and maintenance of a register of pharmacists. Section 35 provides for entry of additional qualifications in the register in relation to any registered pharmacist. Section 36 provides for the removal of any person from the register, either permanently or for a temporary period. As per Section 42 of the Pharmacy Act, a person may not practice the profession of pharmacy unless he or she is registered as a pharmacist in accordance with the Pharmacy Act. Sub-section (2) of Section 42 is a penal provision which states that any person who is not a registered pharmacist and contravenes sub- section (1) of Section 42 shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

13.2 In exercise of powers vested in the Pharmacy Act, PCI has framed a number of Regulations for prescribing minimum standards of education as well as regulating the subject of pharmacy in India, including:

- a. Education Regulations, 1991;
- b. Pharm. D Regulations, 2008;
- c. Minimum Qualifications for Teachers in Pharmacy Institutions Regulations, 2014;
- d. Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014;
- e. Master of Pharmacy (M.Pharm) Course Regulations, 2014;
- f. Bachelor of Pharmacy (Practice) Regulations, 2014;
- g. Pharmacy Practice Regulations, 2015.

Thus, considering the various provisions of the Pharmacy Act and the regulations made therein, it can be said that the Pharmacy Act is a complete Code in itself in the subject of pharmacy. The PCI has been constituted as a body empowered to regulate the education and profession of pharmacy in India. It cannot be disputed that the subject of pharmacy is a special and not a general subject. From the relevant provisions of the Pharmacy Act, more particularly, the provisions referred to hereinabove, the Pharmacy Act exclusively covers all areas inclusive of approval of courses, laying

down course content, eligibility conditions for students as well as teachers, evaluation standards of examination, grant of registration, entry of higher qualifications in the same discipline, taking action for infamous conduct etc. It also contains a penal provision. Thus, the legislative intent in enacting the Pharmacy Act seems to be to ensure that there is seamless regulation of the profession. To carry out the objective and purpose for enacting the Pharmacy Act, the Legislature has established under the Statute the autonomous statutory authority i.e. Pharmacy Council of India. Thus it can be said that in the field of pharmacy, the Pharmacy Act is a special law.

13.3 On the other hand, the AICTE Act can be said to be a general law applicable to the technical institutions and technical education. If we consider the Statement of Objects and Reasons for the AICTE Act, it is specifically stated that the AICTE Act was originally set up by a Government Resolution as a National Expert Body to advise the Central and State Government for ensuring the coordinated development of technical education in accordance with the approved standards. It is as under:

“1. The All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert body to advice the Central and the State Governments for ensuring the co-ordinated development of technical education in accordance with approved standards. During the first three decades the Council functioned quite effectively and there was phenomenal development of technical education in this period. However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

2. Taking into account the growing erosion of standards, the Council at its meeting held in 1981 came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country.

In pursuance of these and other recommendations, a National Working Group was set up in November, 1985 to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education, 1986, also stipulated that the AICTE will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education.

3. The Bill seeks to provide statutory powers to the All India Council for Technical Education to ensure:

- (i) proper planning and co-ordinated development of the technical education system throughout the country;
- (ii) promotion of qualitative improvement of technical education in relation of planned quantitative growth, and
- (iii) regulation of the system and proper maintenance of norms and standards.

Accordingly, the powers and functions assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions. As part of this overall co-ordination and development responsibilities, the AICTE will also give grants to institutions for identified developmental purposes. In addition, the AICTE will promote innovation, research and development, linkages with industry and greater access to technical education by women, handicapped, and the weaker sections of the society.” The preamble of the AICTE Act is as under:

“An Act to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.” Thus, it can be said that the AICTE Act can be said to be a general law with respect to the technical education. It is true that in the definition, as per Section 2(g) of the AICTE Act, “technical education” also means “pharmacy”. However, the same shall be dealt with hereinbelow.

14. Now having held that the Pharmacy Act is a special Act dealing with the special subject of pharmacy, the next question which is posed for consideration of this Court is whether in the field of pharmacy, the Pharmacy Act would prevail or the AICTE Act? The next question is whether in the profession of pharmacy, the PCI shall have the exclusive jurisdiction or the AICTE?

14.1 While answering the question whether the Pharmacy Act which is a special Act (as held hereinabove) shall prevail or the AIOCTE Act which is a general law (as held hereinabove) and the submissions on behalf of AICTE that as the AICTE Act is subsequent law and in the definition of “technical education” contained in Section 2(g), it includes “pharmacy” also, therefore, being a subsequent law, the same shall prevail as there will be a implied repeal of the Pharmacy Act, few decisions of this Court are required to be referred to and considered.

14.2 In the case of Hari Shankar Jain (supra), this Court had an occasion to consider the maxim “Generalia specialibus non derogant”. The relevant portions of paragraphs

8 and 9 are as under:

“8. The maxim “Generalia specialibus non derogant” is quite well-known. The rule flowing from the maxim has been explained in *Mary Seward v. Owner of the “Vera Cruz”* [(1884) 10 AC 59, 68] as follows:

“Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.” xxx xxx xxx

9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament.

Vide *London and Blackwall Railway v. Limehouse District Board of Works* [26 LJ Ch 164 : 69 ER 1048] , and *Thorpe v. Adams* [(1871) LR 6 CP 125] . In *J&K. Cotton Spinning and Weaving Mills Co.*

Ltd. v. State of U.P. [AIR 1961 SC 1170 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 43] , this Court observed (at p. 1174):

“The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions, one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.” 14.3 In the case of *D. J. Bahadur* (supra), this Court had an occasion to consider the conflict between the general legislation and the special legislation and argument of ‘implied repeal’. In the said decision, this Court took note of the following extracts from the *Craies on Statute Law* [1963 Edn., pp. 376-77]:

“49. xxx xxx xxx “The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Sewards v. Vera Cruz* [*Mary Swards v. Owner of the “Vera Cruz”*, (1884) 10 AC 59, 68] , ‘that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is

a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalia specialibus non derogant* — i.e. general provisions will not abrogate special provisions.’ When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.” In the said decision, it is observed that an ‘implied repeal’ is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. It is further observed that in determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. It is observed that for certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. It is further observed that what is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realizes itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb.

14.4 In the case of Yakub Abdul Razak Memon (*supra*), this Court again had an occasion to consider the conflict between the general statute and the special statute.

After considering the various decisions of this Court on the point, it is observed and concluded in paragraphs 1518 to 1522 as under:

“1518. The principle that the latter Act would prevail the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

1519. The basic rule that a general provisions should yield to the specific provisions is based on the principle that if two directions are issued by the competent authority, one covering a large number of matters in general and another to only some of them, his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions must be given effect to.

1520. It is a settled legal proposition that while passing a special Act, the legislature devotes its entire consideration to a peculiar subject. Therefore, when a general Act is subsequently passed, it is logical to presume that the legislature has not repealed or modified the former special Act unless an inference may be drawn from the language

of the special Act itself.

1521. In order to determine whether a statute is special or general one, the court has to take into consideration the principal subject-matter of the statute and the particular perspective for the reason that for certain purposes an Act may be general and for certain other purposes it may be special and such a distinction cannot be blurred.

1522. Thus, where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein. (Vide *Ram Narain v. Simla Banking and Industrial Co. Ltd.* [AIR 1956 SC 614] , *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P.* [AIR 1961 SC 1170] , *Kumaon Motor Owners' Union Ltd. v. State of U.P.* [AIR 1966 SC 785] , *Sarwan Singh v. Kasturi Lal* [(1977) 1 SCC 750] , *U.P. SEB v. Hari Shankar Jain* [(1978) 4 SCC 16 : 1978 SCC (L&S) 481] , *LIC v. D.J. Bahadur* [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] , *Ashoka Mktg. Ltd. v. Punjab National Bank* [(1990) 4 SCC 406 : AIR 1991 SC 855] and *T.M.A. Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481].” 14.5 In the case of *R.S. Raghunath v. State of Karnataka* (1992) 1 SCC 335, this Court was considering the enforceability of special law on the subject in spite of the general law. This Court noted the following paragraph in *Maxwell on the Interpretation of Statutes*:

“A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, ‘where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.’” That, thereafter it is further observed and held as under:

“In *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey* [AIR 1966 SC 1931 : (1966) 3 SCR 663] applying this principle it is held that general law does not abrogate earlier special law by mere implication. In *Eileen Louise Nicolle v. John Winter Nicolle* [(1922) 1 AC 284] , Lord Phillimore observed as under:

“It is no doubt a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one. This as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute ... or be the underlying common or customary law of

the country.

... ‘Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation ... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so’. [Ed.: Quoting from Vera Cruz case, (1884) 10 AC 59, 68] ” In *Justiniano Augusto De Piedade Barreto v. Antonio Vicente Da Fonseca* [(1979) 3 SCC 47 : AIR 1979 SC 984] this Court observed that a law which is essentially general in nature may contain special provisions on certain matters and in respect of these matters it would be classified as a special law. Therefore unless the special law is abrogated by express repeal or by making provisions which are wholly inconsistent with it, the special law cannot be held to have been abrogated by mere implication.”

15. Applying the law laid down by this Court in the aforesaid decisions and as observed hereinabove, the Pharmacy Act is a Special Act in the field of pharmacy and it is a complete code in itself in the field of pharmacy, the Pharmacy Act shall prevail over the AICTE Act which, as observed hereinabove, is a general statute dealing with technical education/institutions. Therefore, the submission on behalf of AICTE and/or concerned educational institutions that the AICTE Act is a subsequent law and in the definition of “technical education” it includes the “pharmacy” and therefore it can be said to be an “implied repeal”, cannot be accepted. At this stage, it is required to be noted that as such in the AICTE Act there is no specific repeal of the Pharmacy Act, more particularly when, as observed hereinabove, the Pharmacy Act is a Special Act and the subsequent enactment of AICTE Act is general and therefore the Pharmacy Act being a Special Act must prevail. Apart from that, with regard to several aspects, there is no provision made in AICTE Act which are exclusively within the domain of PCI.

Thus, it cannot be accepted that there is ‘implied repeal’ of the Pharmacy Act.

16. Now the next question which is required to be considered is whether in the field of pharmacy, PCI would have the jurisdiction or AICTE constituted under the AICTE Act which is held to be a general law. The Constitution and Composition of Central Council under the Pharmacy Council of India is as under:

“3.

Constitution and composition of Central Council.-The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely :-

(a) Six members, among whom there shall be at least one teacher of each of the subjects, pharmaceutical chemistry, pharmacy, pharmacology and pharmacognosy elected by the University Grants Commission from among persons on the teaching staff of an Indian University or college affiliated thereto which grants a degree or diploma in pharmacy ;

(b) Six members, of whom at least four shall be persons possessing a degree or diploma in, and practicing pharmacy or pharmaceutical chemistry nominated by the Central Government ;

(c) One member elected from amongst themselves by the members of the Medical Council of India.

(d) the Director General, Health Services, ex officio or if he is unable to attend any Meeting, a person authorized by him in writing to do so;

The Drugs Controller, India, ex officio or if he is unable to attend any meeting, a person authorized by him in writing to do so;

(e) the Director of the Central Drugs Laboratory, ex officio ;

(f) a representative of the University Grants Commission and a representative of the all India Council for Technical Education ;

(g) one member to represent each State elected from amongst themselves by the members of each State Council, who shall be a registered pharmacist ;

(h) One member to represent each State nominated by the State Government, who shall be a registered pharmacist :” Therefore, PCI consists of experts in the field of pharmacy and related subjects connected with the education of pharmacy. Therefore, under the statute, specialized persons in the field of pharmaceutical, pharmacy etc. shall be the members of the PCI.

16.1 On the other hand, so far as AICTE is concerned, only one member would be from the field of pharmacy and that too representative of PCI. Under the circumstances, the PCI is the body of experts connected with the subject of pharmacy and related subjects and therefore it will be in the larger interest and more particularly in the interest of education of pharmacy that PCI shall alone have the Jurisdiction in the field of pharmacy, rather than AICTE.

17. The aforesaid question is also required to be viewed from another angle. Both, the PCI and AICTE are the creature of the statute. Therefore, it is not at all healthy that the two regulators, both being Central authorities, can be permitted to fight for supremacy. The fight of supremacy between both the regulators is unhealthy for the education sector as well as the institutions to permit two regulators to function in the same field. Therefore also and more particularly when the PCI is consisting of the experts in the field of pharmacy and other related subjects, it is in the larger

interest in the field of pharmacy that the PCI must be given the power to regulate in the field of pharmacy.

17.1 An identical question came to be considered by this Court in the case of Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra). In that case, this Court was considering the similar provisions in the field of architecture and whether the mandate of the Council of Architecture or that of AICTE would prevail on the question of granting approval and related matters to the institution for conducting architecture education course, if there is contradiction in the opinions of these two bodies. At this stage, it is required to be noted that in the definition of 'technical education' in Section 2(g), 'architecture' is also included like 'pharmacy'. In that case also, the Architecture Act was enacted prior to the AICTE Act, 1987, i.e. in the year 1972. After considering the scheme of the Architecture Act and the powers and function of the Council of Architecture, this Court observed and held that the Architecture Act is a Special Act and shall prevail over the AICTE Act being a general Act, in case of conflict/contradictions in the opinions of the aforesaid two bodies.

After considering the similar submissions made on behalf of AICTE in the case of Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra), it is ultimately observed and held in paragraphs 63 and 64 as under:

“63. We are of the opinion that in respect of the provisions of Section 2 (g) of the 1987 Act, the definition of “technical education” would have to be given such a construction and the word “architecture” should be treated to have been inapplicable in cases where the AICTE imports its regulatory framework for institutions undertaking technical education. There would however be no substitution because the context would not demand it. This construction of the definition clause is necessary as the external context requires it to prevent an unworkable outcome in implementation of the 1987 Act. The principle of implied repeal cannot apply so far as the provisions relating to architecture education is concerned, on the basis of the 1987 Act having become operational. One of the dominant purposes of the 1972 Act is recognition of qualifications on architecture. The registration of an architect is dependent upon acquisition of such recognised qualification. The said Act cannot be held to have been repealed by implication for the sole reason of inclusion of the word “architecture” in the definition of technical education. AICTE has failed to discharge its onus to establish the 71 said provisions of the 1972 Act was repealed by implication.

64. We accordingly hold that so far as recognition of degrees and diplomas of architecture education is concerned, the 1972 Act shall prevail. AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in the subject of architecture. Norms and Regulations set by CoA and other specified authorities under the 1972 Act would have to be followed by an institution imparting education for degrees and diplomas in architecture.

18. We are in complete agreement with the view taken by this Court in Shri Prince Shivaji Maratha Boarding House's College of Architecture (supra). Otherwise on merits also, as observed and held hereinabove, the Pharmacy Act which is a Special Act in the field of pharmacy shall prevail and consequently so far as the recognition of degrees and diplomas of pharmacy education is concerned, the Pharmacy Act shall prevail. As observed hereinabove, PCI constituted under the provisions of the Pharmacy Act which is consisting of the experts in the field of pharmacy and/or related subjects shall prevail. Consequently, the norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by an institution imparting education for degrees and diplomas in pharmacy.

19. Now, so far as reliance placed upon Article 372 of the Constitution by learned Advocate appearing on behalf of AICTE is concerned, at the outset, it is required to be noted that even as per Article 372 of the Constitution, unless a pre- constitutional statute is specifically repealed it continues to remain in operation. In the present case, even in the AICTE Act there is no specific repeal of the Pharmacy Act, 1948. As observed hereinabove, there is not even 'implied repeal'. Therefore, reliance placed upon Article 372 of the Constitution is misconceived.

20. At this stage, it is required to be noted that having realized the difficulties in view of dual regulations of pharmacy education under the PCI and AICTE, a ministerial level meeting between the Minister of Health and Family Welfare and the Minister of HRD, Union of India was held on 03.10.2018 to end the dual regulations on pharmacy education under PCI and AICTE. In the counter-affidavit filed by the AICTE itself, it is stated that during the meeting it was noted and even it is submitted by Ms. Pinki Anand, learned ASG appearing on behalf of the Union of India that during the meeting it was noted that, both the Pharmacy Act, 1948 and the AICTE Act, 1987, contain the provisions regarding pharmacy education leading to duplication of regulations and considerable confusion at the field level, it was unanimously agreed that this dual regulation should be ended forthwith and the AICTE Act governing the general technical education would be amended deleting 'pharmacy' from its mandate and the pharmacy education would thereafter be governed by the Pharmacy Act, 1948. It is submitted that the amendment in Section 2(g) of the AICTE Act was proposed, but thereafter there is no further progress in the wake of formation of newly proposed Higher Education Council of India and finalization of NEP, which as such has nothing to do with the Pharmacy Act. Therefore, even according to the Union of India, the word 'pharmacy' is to be deleted from the definition of 'technical education' contained in Section 2(g) of the AICTE Act.

21. In view of the above and for the reasons stated above, it is held that in the field of Pharmacy Education and more particularly so far as the recognition of degrees and diplomas of Pharmacy Education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by the concerned institutions imparting education for degrees and diplomas in Pharmacy, including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of the PCI shall only be followed by the institutions imparting degrees and diplomas in Pharmacy. The questions are answered accordingly.

22. Now the next question which is required to be considered is with respect to students already admitted pursuant to the orders passed by this Court and the concerned High Courts. The conflict and the dispute arose because despite refusal by the PCI, the AICTE increased the intake capacity in the respective institutions, which were not approved by the PCI. By the interim orders, this Court and the respective High Courts have directed to allow those students to appear in the examinations and to register them as pharmacists. Such Interim Orders are also made final. Therefore, the present decision shall not affect those students admitted in the increased intake capacity and/or pursuant to the interim orders passed by this Court and/or final judgments and orders passed by the respective High Courts. PCI is therefore directed to give consequential benefit of registration to such students. However, at the same time, all pending applications for increase in intake capacity and/or for recognition and/or approval of course/institutions in the pharmacy shall be as per the provisions of the Pharmacy Act, 1948 and the regulations, if any, thereunder and as per the norms and regulations fixed by the PCI. It is further directed the concerned institutions who increased their intake capacity as approved by AICTE and their increase in intake capacity was not approved by PCI, shall apply afresh for increase in intake capacity and/or evening shift for the next academic year within a period of four weeks from today and their cases for increase in intake capacity and/or applications for recognition and/or applications for approval of the course or evening shift shall be considered by the PCI in accordance with the Pharmacy Act, 1948 and rules and regulations framed therein and the norms prescribed by the PCI.

23. All these Transferred Cases/Appeals/Writ Petitions stand disposed of accordingly.

.....J. (ARUN MISHRA)J. (VINEET SARAN)
.....J. (M. R. SHAH) New Delhi;

March 05, 2020