

A VIIT PHARMACY COLLEGE AND ANOTHER
v.
DR. A.P.J. ABDUL KALAM TECHNICAL UNIVERSITY AND
ANOTHER
(Writ Petition (C) No.390 of 2021)

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APRIL 15, 2021

[R.F. NARIMAN, B.R. GAVAI AND HRISHIKESH ROY, JJ.]

Education/Educational Institutions: Pharmacy college – Respondent no.1-University invited applications for grant of affiliation for the year 2020-2021 –Petitioners were granted approval by the Pharmacy Council of India (PCI) for conducting first year B.Pharma course for the academic year 2020-2021 – In the meantime, State Government came up with policy dated 15.05.2020 for restricting the number of colleges to only two per district – The said policy was challenged in bunch of petitions – High Court had set aside the policy only insofar as petitioners who had approached High Court – Since respondent no.1-University refused to grant affiliation to the petitioners and refused to permit their students to appear before the first year B.Pharma examination, the petitioners approached this Court seeking direction to respondent no.1-University to grant affiliation for B.Pharma course to the petitioner colleges for the academic year 2020-2021 with further direction to organize special examinations for B.Pharma students for academic year 2020-2021 in view of notification dated 19.03.2021 – Held: Indisputably, in the instant case, the PCI had granted approval to the petitioners by order dated 10.04.2020, with intake capacity of 100 and 60 admissions/students respectively – Not only that, the petitions filed by the petitioners challenging the policy decision of the State Government dated 15.05.2020, were allowed by the High Court by judgment and order dated 9.11.2020 – Indisputably, the State Government also by notification dated 19.03.2021, had granted conditional affiliation after considering the recommendations made by the Affiliation Committee – In the peculiar facts and circumstances of the case and particularly, since the averments made on affidavit by the petitioners, were not controverted by respondent No.1-University, petition is allowed – Respondent No.1-University is directed to grant affiliation to the

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petitioner colleges for the academic year 2020-21 and also permit the students of the petitioner colleges to participate in the special examinations to be organized by respondent No.1-University for the academic year 2020-21 in view of the notification dated 19.03.2021. A

Pharmacy Council of India v. Dr. S.K. Toshiwal Educational Trusts Vidarbha Institute of Pharmacy and Others Etc. 2020 SCC OnLine SC 296 – relied on B

Case Law Reference

2020 SCC OnLine SC 296 relied on Para 3 C
CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 390 of 2021.

(Under Article 32 of The Constitution of India)

Siddhartha Dave, Sr. Adv., Ajit Sharma, Anant Ram Mishra, Abhishek Rana, Sushil Singh, Advs. for the Petitioners. D

Amitesh Kumar, Ms. Binisa Mohanty, Ms. Priti Kumari, Mritunjay Kumar Sinha, Advs. for the Respondents.

The Order of the Court was passed by

B. R. GAVAI, J. E

The petitioners have approached this Court seeking a direction to the respondent No.1-Dr. A.P.J. Abdul Kalam Technical University (hereinafter referred to as the ‘University’) to grant affiliation for B. Pharma course to the petitioner colleges for the academic year 2020-21 with further direction to respondent No.1-University to organize special examinations for B. Pharma students for academic year 2020-21 in view of the notification dated 19th March 2021. F

2. The facts in brief giving rise to the petition are as under:-

On 28th January 2020, the respondent No.1-University invited applications for grant of affiliation for the year 2020-21. In response thereto, the petitioners submitted applications in the month of February 2020 seeking affiliation for B. Pharma course for the year 2020-21. It is pertinent to note that the Pharmacy Council of India (hereinafter referred to as the ‘PCI’) granted its approval to the petitioner No.1-VIIT Pharmacy College vide order dated 10th April 2020 for conduct of first H

A year B. Pharma course for the academic year 2020-21 with intake capacity of 100 admissions/students. Insofar as the petitioner No.2-RV Institute of Pharmacy is concerned, a similar approval was also granted; however with the intake capacity of 60 admissions/students. The same was subject to submission of consent of affiliation of Examining Authority and NOC of the State Government.

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3. In the meantime, the respondent No.2-State of Uttar Pradesh came up with the policy dated 15th May 2020 for restricting the number of pharmacy colleges to only two per district. The said policy came to be challenged before the High Court of Allahabad in bunch of petitions being Misc. Single No. 12536 of 2020 filed by Zee College of Pharmacy with companion matters. The Allahabad High Court vide judgment and order dated 2nd November 2020, relying on the judgment of this Court in the case of *Pharmacy Council of India v. Dr. S.K. Toshiwal Educational Trusts Vidarbha Institute of Pharmacy and Others Etc.*¹ set aside the policy dated 15th May 2020, only insofar as the petitioners who had approached the High Court. The petitioner institutions therein were permitted to participate in the counselling being conducted for admission to Bachelors of Pharmacy course for the academic year 2020-21.

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4. The petitioner No.1, relying on the order of the High Court dated 2nd November 2020, also filed writ petition being Misc. Single No. 19510 of 2020 before the Allahabad High Court. The said petition was also allowed and the policy dated 15th May 2020 was set aside with respect to the petitioner therein and the respondents were directed to take a decision on the application of the petitioner for affiliation in accordance with law. A similar petition being Misc. Single No. 19509 of 2020 came to be filed by petitioner No.2 which too was allowed on like terms. Likewise, one S.D. College of Sciences had also filed a writ petition being Misc. Single No. 19568 of 2020 which was similarly allowed. All the above three petitions were allowed by the High Court vide order dated 9th November 2020.

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5. However, the respondent No.1-University vide impugned order dated 7th December 2020, rejected the application of S.D. College of Sciences for grant of affiliation. The present petitioners along with one another institution thereafter filed Writ Petition (C) No. 1468 of 2020

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¹ 2020 SCC OnLine SC 296

before this Court in the month of December 2020. This Court vide order dated 12th January 2021 stayed the operation of the order dated 7th December 2020 passed by respondent No.1-University and tagged the said petition along with Writ Petition (C) No. 1430 of 2020 filed by Rakshpal Bahadur Pharmacy Institute. A

6. It is the contention of the petitioners, that in March 2021 though the students of the petitioner colleges were invited to the examination centre, they were not permitted to participate in the exam at the last moment. It is also the contention of the petitioners, that in view of the order dated 5th March 2021, passed by this Court in I.A. No.33272 of 2021 in Writ Petition (C) No. 1433 of 2020, students of one Zee College of Pharmacy were permitted to participate in the examination. B C

7. In the meantime, vide order dated 19th March 2021, the State Government, after considering the recommendations made by the Affiliation Committee, has granted conditional affiliation for admission in B. Pharma course, in compliance of the order of the High Court passed in Writ Petition (C) No. 12536 of 2020. D

8. Since the respondent No.1-University refused to grant affiliation to the petitioners and has refused to permit their students to appear for the first year B. Pharma examination, the petitioners have approached this Court.

9. This Court, in the case of, ***Dr. S.K. Toshiwal Educational Trusts Vidarbha Institute of Pharmacy (supra)***, has held as under:- E

“87. 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.” F G

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- A 10. Indisputably, in the present case, the PCI has granted approval to both the petitioners vide order dated 10th April 2020, with intake capacity of 100 and 60 admissions/students respectively. Not only that, the petitions filed by the petitioners challenging the policy decision of the State Government dated 15th May 2020, have been allowed by the High Court vide judgment and order dated 9th November 2020. Indisputably,
- B the State Government also vide notification dated 19th March 2021, has granted conditional affiliation after considering the recommendations made by the Affiliation Committee. In the peculiar facts and circumstances of the case and particularly, taking into consideration,
- C that the averments made on affidavit by the petitioners, are not controverted by the respondent No.1-University, we find that the petition deserves to be allowed.

11. The respondent No.1-University is therefore directed to grant affiliation to the petitioner colleges for the academic year 2020-21 and also permit the students of the petitioner colleges to participate in the
- D special examinations to be organized by the respondent No.1-University for the academic year 2020-21 in view of the notification dated 19th March 2021.

12. The petition is allowed in the aforesaid terms.