

Jaihind College Of Pharmacy vs Pharmacy Council Of India & Anr on 16 October, 2020

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 13440/2019
JAIHIND COLLEGE OF PHARMACY Petitioner
Through Mr.Sanjay Sharawat, Adv.

versus

PHARMACY COUNCIL OF INDIA & ANR. Respondents
Through Mr.Zoheb Hussain, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH
ORDER

% 16.10.2020 This hearing is conducted through video conferencing. CM APPL. No.18225/2020

1. This application is filed by the petitioner seeking an interim order to direct respondent No.1/PCI to take final decision on the application of the petitioner to grant approval for academic session 2020-21 at the earliest and permit the petitioner to admit students and commence courses for the current academic session 2020-21.

2. This writ petition is filed seeking the following reliefs:

"[a] Issue a writ of certiorari and quash the letters dated 17.07.2019 and 09.09.2019 issued by the respondent No.1 as the same as ultra virus the Pharmacy Act, 1948 and also violative of the Fundamental Rights guaranteed to the petitioner under Articles 14 and 19 of the Constitution of India; and [b] Issue a writ of mandamus and direct the respondents to permit and allow the petitioner to submit requisite applications for seeking approval for Pharmacy Courses for academic session 2020-21 with a further direction to them to process and decide the same in accordance with the law and hors the moratorium/prohibition imposed by respondent No.1 by letters dated 17.07.2019 and 09.09.2019."

3. Relevant portion of the impugned dated 17.07.2019 reads as follows:

"During the 106th Central Council meeting of the PCI held on 9th and 10th April, 2019, a concern was expressed about the mushrooming of pharmacy colleges in the

country. The issue was thread barely deliberated. It was noted that-

- a) There are approximately 1,985 D.Pharm and 1439 B.Pharm institutes in the country. The annual intake of students in these institutes (both D.Pharm and B.Pharm) is 2,19,279.
- b) This available workforce is enough to meet the current pharmacist-to-population needs of the country.
- c) The rapid increase in the number of pharmacy colleges over the last decade may result in shortage of trained and qualified teaching faculty which may affect the quality of education imparted to students.
- d) The pass out students are not getting reasonably paid job opportunities in public as well as in private sector.

Considering the above facts, the House passed the following resolution unanimously:-

RESOLUTION "Taking into consideration the availability of sufficient qualified pharmacist workforce, the House unanimously resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in Pharmacy for a period of five years beginning from the academic year 2020-2021. This moratorium shall not be applicable in the North Eastern region of the country where there is a shortage of pharmacy colleges."

The said Resolution has been communicated to Ministry of Health and Family Welfare, Government of India on 17.07.2019 for information under intimation to All India Council for Technical Education (AICTE) and also posted on the Council's website.

This is for information and necessary action at your end."

4. Hence, essentially the issue raised is that a moratorium has been put on the opening of new pharmacy colleges for running Diploma as well as Degree courses in pharmacy beginning from the academic session 2020-21 on account of excess pharmacy colleges. It is clarified that the moratorium is not applicable to the North Eastern region of the country where there is a shortage of pharmacy colleges.

5. When this matter came up for hearing before this court on 19.12.2019, this court passed the following directions:

"6. For the moment, as in the other cases, respondent no.1/PCI will allow the petitioners in the captioned matters to file their respective applications, which thereafter will be processed. However, no final decision will be taken till such time a decision is rendered on merits in the captioned

petitions.

7. Furthermore, respondent no.1/PCI will also operationalise its portal.

8. Accordingly, in view of the directions issued above, the interim applications, i.e. CM Nos.54530/2019, 54534/2019 and 54540/2019, are disposed of."

6. Hence, the injunction application of the petitioner was disposed of with the direction that respondent No.1/PCI will allow the petitioners in the captioned matters to file their respective applications but no final decision will be taken till time a decision is rendered on merits in the captioned petitions. The injunction application was accordingly disposed of.

7. Now the present application is filed saying that pursuant to the aforesaid liberty granted to the petitioners, they have moved the application and they have invested large amounts in establishing the pharmacy college. Inspections have taken place but the result of the inspections has not been declared. It is prayed that this court may direct respondent No.1/PCI to decide the application of the petitioner and permit the petitioners to commence operation of the colleges, subject to further orders and directions of this court.

8. It is stressed that the petitioners have invested large amounts in land and infrastructure, which is lying waste and hence, they may be permitted to commence their college.

9. Mr. Sanjay Sharawat who is appearing in other connected matters where similar reliefs have been sought, has urged that interim orders as noted above dated 19.12.2019 were passed by this court only in writ petitions that were filed prior to 13.01.2020. In all these matters, this court had permitted the petitioners to file their applications and similar orders were passed as passed on 19.12.2019. For the writ petitions filed subsequently, no interim order has been passed and the matters are pending adjudication. He further stresses that despite the moratorium in existing colleges additional seats have been allowed and in all about 34800 seats have been allowed indicating that respondent No.1/PCI is arbitrarily ignoring the moratorium and allowing additional seats despite their claim that there are excess seats available in India.

10. Learned counsel for respondent No.1/PCI has opposed the present application. He has pointed out that the factual position as stated by the learned counsel for the petitioner is incorrect. More than 1000 writ petitions have been filed in this court challenging the moratorium where no such interim order has been passed. He also states that the additional seats were allowed only in the areas where there is a shortage of pharmacy colleges especially Northern Eastern areas.

11. I may only note that on 19.12.2019 the injunction application of the petitioner was disposed of. Now, there are no new facts to warrant filing of a fresh injunction application. That apart from, I cannot help noticing that in the present application though it has been strongly urged that crores of rupees have been invested which are lying waste, there is no such averment made anywhere in the application. Further when the petitioners filed the application for recognition they knew that the application is not to be processed by the respondent as per order of this court.

12. As rightly pointed out by the learned counsel for respondent No.1/ PCI, if the present application is allowed, it virtually amounts to allowing the writ petition itself. There are no cogent reasons to pass such an order. There is no merit in the present application and the same is dismissed.

JAYANT NATH, J.

OCTOBER 16, 2020/v