

(2017) 04 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : 813 of 2011

ARVIND SHARMA

APPELLANT

Vs

STATE OF HIMACHAL PRADESH AND ANOTHER

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 04 SHI CK 0022

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Amit Singh Chandel, Pankaj Negi, Tanu Sharma

Final Decision : Dismissed

Judgement

1. By way of this writ petition, the petitioner has prayed for the following reliefs:
"A. That Annexure P-2, dated 12.04.2010 may very kindly be quashed and set aside.

B. That respondents be directed to make the registration of the petitioner as Bachelor of Science in Medical Laboratory Technology from 12.11.2008 on which the petitioner applied for the registration.

C. That the relevant record may kindly be summoned.

D. Any other order which this Hon"ble Court deems just and proper in the facts and circumstances of the case submitted hereinafter may be passed in favour of petitioner and against the respondents."

2. The grievance of the petitioner is that he has done his B.Sc. (Bachelor of Science) degree in Medical Laboratory Technology from Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur (hereinafter referred to as "JRN RV University") in the year 2007 and thereafter he applied for registration with respondent No. 2 on 12.11.2008, however, respondent No. 2 rather than registering the petitioner with it, has denied his rightful claim on arbitrary and flimsy grounds. According to the petitioner, he completed the course in issue

from Janardhan Rai Nagar Rajasthan Vidyapeeth University Udaipur, which was a deemed University, as per the notification issued by the Government of India, Ministry of Human Resource Development, dated 19.08.2003. It is further the case of the petitioner that vide Notification Annexure P-4, dated 08.10.2008, Indira Gandhi National Open University has confirmed the approval of programmes offered by the institution by according provisional recognition for academic year 2007-08, i.e. the year when the petitioner had obtained his Bachelor of Science degree in Medical Laboratory Technology from the said University. As per the petitioner, the issue of recognition of the degree stands settled by way of Annexure P-4, wherein it has been clarified by the University Grants Commission that the Joint Committee has already conveyed its provisional approval qua the degree which had been obtained by the petitioner from the said University. On these bases, it has been submitted by the petitioner that the act of respondent No. 2 of not registering the petitioner with it is an arbitrary act and amounts to malice in law on the part of the respondents as they have no legal excuse to deny recognition as well as registration of the petitioner with it.

3. In response, the stand of respondent No. 2 is that the petitioner has alleged that he has undergone 3 ? years Bachelor of Science course in Medical Laboratory Technology and has also undergone a training of two years in the said course and one year certificate course in the same from G.N. Institute of Medical Technology, Kurukshetra, which as per petitioner is recognized to Janardhan Rai Nagar Rajasthan Vidyapeeth University, Udaipur, but the petitioner has not placed any material on record to demonstrate as to how the University in issue is running University Extension Centre/Study Centre/Learning Centre in Kurukshetra, Haryana, i.e. outside the State of its origin, especially in view of the law laid down by the Hon'ble Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and others, (2005) 5 Supreme Court cases 420, wherein it has been held by the Hon'ble Supreme Court that no University can open Study Centres outside the territorial jurisdiction conferred upon it by its parent statute as far as the opening of Learning or Study Centres in Paramedical/Technical and Scientific Education is concerned. It is further the stand of respondent No. 2 that the petitioner was enrolled with the University in the year 2005, when the University in issue was not having any recognition to conduct the course in which degree has been obtained by the petitioner. It is further mentioned in the reply that though the University in issue was given provisional recognition in the year 2007-08, but the petitioner in fact had passed out the course before academic year 2007-08 in the year 2007 itself. Thus, the stand of the respondent-Council is that petitioner having enrolled with the University in the year 2005 and having passed out before the academic year 2007-2008 from the University concerned, in fact, was given a pass certificate for the academic year for which the University in issue was not having any recognition whether provisional or post facto. It was further stated in the reply that the University in issue had addressed a communication dated 3rd July, 2006 to Chairman of University

Grants Commission, which demonstrated that the University in issue was given ex post facto approval under the Distance Education Mode from 1st June, 2001 to 31st August, 2005 upon an undertaking given by the said University to the effect that the said University would stop admitting students from 13th August, 2005 under Distance Education mode and that an advertisement to this effect was already published in the newspaper, however, as per the respondent-Council, the said University had breached its own undertaking and admitted students for the academic year 2005 also in 3 ? year training course in Bachelor of Science in Medical Laboratory Technology. Thus, on these bases, the respondent-Council denied the claim of the petitioner.

4. On 19.04.2011, this Court had granted time to the petitioner to file rejoinder, however, no rejoinder has been filed by him nor any request was made in this regard during the course of arguments.

5. I have heard the learned counsel for the parties and have also perused the pleadings.

6. It is apparent from the pleadings as well as documents appended therewith that petitioner herein vide application dated 12.11.2008 (Annexure P-1) requested the Paramedical Council, IGMC to register his name in the said Council on the strength of his having completed his graduation in Science, i.e. B.Sc. (MLT) from JRN RV University in the year 2007.

7. Pursuant to this, vide communication dated 27.11.2008 (Annexure P-1/A), respondent No. 2 called upon the petitioner to produce documents as to from where he had gained two years training. In response to this, petitioner wrote a letter to Principal, GN Medical Institute, Jangra Dharamhala, Thaneshwar, Kurukshetra on the subject "Registration with HP Para Medical Council, Shimla" and requested them that as he was enrolled in the said institute from April, 2004 to September, 2007 for diploma/degree courses in Medical Lab Technology as a regular candidate from JRN RV University, Udaipur, therefore, he may be issued the documents of approval issued to the Study Centre by the University/State body alongwith copy of MOU of University for the courses in issue.

8. Vide communication dated 27.12.2008 (Annexure P-1/C), Registrar of respondent No. 2-Council was informed by Director of one G.N. Institute of Medical Technology, which as per this communication was Authorized Extension Centre of Rajasthan Vidya Peeth Deemed University, Udaipur, that the petitioner was imparted two years training from the said institute, which was fully recognized by Janardan Rai Nagar Rajasthan Vidyapeeth University Udaipur, (Rajasthan) and that in addition to above, the petitioner had also completed B.Sc. (MLT) degree from JRN Rajasthan Vidyapeeth University Udaipur.

9. On record, as part of Annexure P-1/C, is a diploma/certificate issued by Janardan Rai Nagar Rajasthan Vidyapeeth University issued in favour of the petitioner in Medical Lab Technology, in which it is mentioned that the petitioner attended two years course in this regard and passed out the examination in the

year 2006. Now, incidentally this certificate is dated 16.01.2007 and beneath the subject of Medical Lab Technology, the words "LATERAL ENTRY" are mentioned.

10. Besides this, petitioner has also placed on record alongwith Annexure P-1/C three Memorandum of Marks. The first Memorandum of Marks pertains to diploma in Medical Lab Technology (Second Year) 2006, in which duration of course is mentioned as two years and the same is dated 10.08.2006. Second Memorandum of Marks pertains to Certificate Course in Medical Laboratory Technology in the year 2004 and the duration of the course is mentioned as one year. This certificate is dated 26.09.2004. The third Memorandum of Marks pertains to Certificate Course in the year 2005 and duration of course is one year and the same is dated 29.07.2005.

11. Petitioner has also placed on record alongwith Annexure P- 1/C, a copy of certificate to the effect that the said certificate was being issued to the petitioner for having attended 3 ? years course, who passed the examination in the year 2007 in " Science (Medical Laboratory Technology) (Lateral Entry). This certificate is dated 21.08.2008. Incidentally, it is not mentioned in the certificate as to whether it was a degree certificate or a diploma certificate. Alongwith this certificate, two Memorandum of Marks are appended, both dated 03 October, 2007 and 05 October, 2007, respectively, as per which, the petitioner had appeared in July/August, 2007 as a Lateral Entry regular candidate in Bachelor of Science in Medical Laboratory Technology (B.Sc.-MLT) in fifth and sixth semester respectively. He has also placed on record one more certificate dated 16.01.2007, in which it is mentioned that the petitioner has attended two years" course and has passed the examination in the year 2006 from the University in Medical Lab Technology (Lateral Entry). This certificate is also silent as to whether it is in lieu of a diploma course or a degree course. Alongwith this certificate, there is one Memorandum of Marks dated 10.08.2006, which reflects that it pertains to two years diploma in Medical Lab Technology (Second Year) 2006.

12. Thus, what is apparent and evident from the abovementioned Annexures, is that according to petitioner, he initially did two years diploma course in Medical Lab Technology and thereafter he took Lateral Entry in the degree course and after undergoing the degree course for one year, he was conferred 3 ? years degree in the course named Bachelor of Science in Medical Laboratory Technology and on the strength of same, he had moved his application with respondent No. 2 to register him as such.

13. The Himachal Pradesh Paramedical Council is a statutory Council, which inter alia registers persons intending to carry on a paraclinical establishment. Section 38 of the same envisages that no person shall be registered on the State register as paramedical practitioner unless he possesses a recognized qualification. Section 43 of this Act further provides that a person who is aggrieved by rejection of his application inter alia under Section 38 may file an appeal against the said rejection to the State Government, whose decision in this regard shall

be final. As the issue of alternative remedy was not seriously stressed, therefore, this Court is not dwelling on the same and the case is being decided on the merits of the case, as has been prayed for by the learned counsel for the parties.

14. Now, it is apparent from the stand of the respondent-Council that the said University was not having the requisite recognition for granting degree/diploma by way of Distance Education mode as has been done in the present case. In the present case, the petitioner claims himself to have undergone diploma/degree course in Medical Lab Technology from April 2004 to September 2007. Relevant issue for the purpose of adjudication of this Court is not whether the University in issue was granted the status of deemed University or not. Relevant issue is as to whether the course in issue was having the recognition to conduct courses through the Academic Centres/Study Centres/ Campus Centres by way of Distance Education. Memorandum of marks as well as diploma/degree certificates placed on record by the petitioner demonstrate that the same were issued to him from the year 2004 up to the year 2007. As per the petitioner, communication dated 04.04.2009, which is appended with Annexure P-1/D is self explanatory that G.N. Institute of Medical Technology, Jangra Dharamshala Campus, Near Chhota Railway Station, Kurukshetra (Haryana) was an authorized Distance Education Study Centre of Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur. However, as per the respondent-Council, as JRNRV University has been granted ex post facto approval recognition only up till 2005 and thereafter provisional approval for the year 2007-08 only, the qualification gained by the petitioner between 2005-2007 cannot be recognized qualification as during this period, the University was not having any recognition either post facto or otherwise. This is evident from the stand taken by the respondent-Council in its communication dated 30.06.2009, which is on record as Annexure P-1/E.

15. There is another communication on record as Annexure P-2, dated 12.04.2010, which reads as under: "To

Arvind Sharma,

S/o Ramesh Chand Sharma,

Village Rapper (Kharotta)

PO Berthin, Distt. Bilaspur

Pin -174029

Sub Registration in Para-Medical Council as B.Sc. (MLT).

Your letter has been received with the subject mentioned above. As you are aware that the Council has written so many letters in response to your letters in which all queries from your side has been explained.

A letter from this office HPPMC No. 3785 dated 30.6.2009 was sent to you in which it was clarified that you can be registered as Laboratory Technician one

year Certificate course on the basis of your qualification as CMLT which you have done on or before 2005. Your registration with the qualification B.Sc. Medical Technology shall not be possible because as per the direction received from Director Indira Gandhi National Open University, it is clarified that the validity of Degrees during post facto approval is concerned, the students should have completed the Degrees during the period of post facto approval by DEC. Therefore, Council will not be able to register you with the qualification B.Sc. Medical Technology because you have completed your B.Sc. in the year 2007.

Yours faithfully,

Registrar,

HP Para-Medical Council

Old Dental Building

IGMC"

16. There is also on record communication dated 08.10.2008 (Annexure P-4) addressed from Indira Gandhi National Open University to Vice Chancellor, Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University) on the subject "Continuation of provisional recognition-reg.", which reads as under: "Prof. Manjulika Srivastava

Subject: Continuation of provisional recognition-reg.

Dear Sir,

This has reference to your letter No. JRNRVU/DEW/2008-2009/811, dated 8 May, 2008 requesting Distance Education Council for continuation of recognition of your Institute for programmes offered through distance mode for the year 2008-09 In this connection we would like to inform you that vide our letter No. F.No. DEC/Univ./State/07/5739, dated 3.9.2007, your University was accorded Provisional recognition for one academic year i.e. 2007-08 for programmes offered through distance mode. Further, your proposal for grant of regular recognition of your University is under process. Meanwhile, your University has been granted continuation of provisional recognition till such time a visiting committee visits your Institute and submits its recommendation.

With regards,

Yours sincerely,

Sd/-

(Manjulika Srivastava)

Prof. Lokesh Bhatt

Vice Chancellor

Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University)

Pratap Nagar

Udaipur-313001

Rajasthan."

17. Now in this background, the moot issue which is to be answered by this Court is whether the diploma/degree in question gained by the petitioner can be said to be a recognized qualification for the purpose of petitioner being registered under the provisions of the Himachal Pradesh Paramedical Council Act.

18. It is borne out from the records and which fact was not disputed during the course of arguments also that the University from which diploma/degree has been obtained by the petitioner was not recognized between the year 2005 and the academic session 2007-2008. The certificate of diploma appended with the petition by the petitioner demonstrates that he was awarded this diploma in Medical Lab Technology (Lateral Entry) for having obtained two years course, examinations of which were passed by the petitioner in the year 2006. Now admittedly, in the year 2006, when the said diploma was obtained by the petitioner, University in issue was not having any recognition post facto or provisional or otherwise to impart education in the said course. Similarly, the certificate to the effect that the petitioner had obtained 3 ? years course in Science (Medical Laboratory Technology) (Lateral Entry) demonstrates that the examinations of the same were held in the year 2007. Incidentally, the petitioner as per Memorandum of Marks appended with the petition is reflected to have had passed the backlog subjects as well as fresh subjects as a Lateral Entry candidate in one go in the months of July/August, 2007.

19. Be that as it may, the fact of the matter still remains that if this 3 - years course is to be taken as 3 years degree course undergone by the petitioner, then obviously this degree is undergone by the petitioner between 2005 and academic year 2007-2008, i.e. during the period for which the University in issue was not having any recognition. Incidentally, the University from which the diploma/degree was obtained by the petitioner was not even impleaded as a party respondent in the writ petition. Therefore, in these circumstances, when there is no material on record to demonstrate that the diploma/degree had been obtained by the petitioner during the period when the University in issue was duly authorized/recognized to offer said diploma/degree course, I do not find any fault with respondent No. 2-Medical Counsel for refusing to register the petitioner under the provisions of Himachal Pradesh Paramedical Council Act.

20. A coordinate Bench of this Court in Jyoti Gautam Vs. State of Himachal Pradesh and others, CWP No. 8917/2012-B has held: "9. What emerges from the reading of Annexure P-15 is that the Allahabad Agriculture Institute (Deemed University) has been granted one time post-facto approval only upto 2005. Thereafter, the University has been granted provisional recognition for one

academic year, i.e. 2007-08. The petitioner sat in the examination in the academic sessions 2005-2006 and 2006-2007. There was no recognition for the years 2005-2006 and 2006-2007 by the Indira Gandhi National Open University. Petitioner's two academic sessions were under cloud. The State Government had again sought the clarification from the Indira Gandhi National Open University to clarify its position whether Allahabad Agriculture Institute (Deemed University) was recognized for the sessions 2005-2006 and 2006-2007, but no information was supplied to it.

10. The matter is required to be considered from another angle. The Physiotherapist course is a paramedical course. The term "paramedical" has been explained by the Himachal Pradesh Paramedical Council Act, 2003 as under:

"Paramedical" means any person qualified in paramedical subject and who helps in teaching or practice of-

(i) medicine with in the meaning of clause (f) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) medicine in Homoeopathy with in the meaning of clause (4) of section 2 of the Himachal Pradesh Homoeopathic Practitioners Act, 1979 (3 of 1980); or

(iii) medicine in Ayurvedic System and Unani System with in the meaning of clause (e) and (h) respectively of section 2 of the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968 (2) of 1968).

11. The definition suggests that it is a technical course. The paramedical courses, nursing courses and engineering courses cannot be imparted through distance education. The candidates undertaking these courses have to attend the regular classes. The question whether the technical courses can be run by the distance education has been gone into by this Court in CWP No.1771 of 2012-H decided on 31.12.2012. The Court has held as under:

"22. Mr. Bhuvnesh Sharma has also argued that the degree awarded by the Indira Gandhi National Open University is valid for the purpose of employment in the State of Himachal Pradesh. Now, the Court will advert to the question of great public importance whether the Indira Gandhi National Open University can award degrees in technical courses like B.Sc. Nursing, diploma/degree in Engineering and other technical courses. The Board of Management of the Indira Gandhi National Open University has resolved on 19.7.1991 to insert Statute 28 in the Statutes of the University. According to Statute 28, Distance Education Council, has been constituted to take all such steps as it may deem fit for the promotion of the Open University and distance education systems in the educational pattern of the country and for the coordination and determination of standards of teaching, evaluation and research in such systems and in pursuance of the objects of the University to encourage greater flexibility, diversity, accessibility, mobility and innovation in education at the university level by making full use of the latest scientific knowledge and new educational

technology. The functions of the distance education council have already been quoted hereinabove. The powers and functions of the Distance Education Council are to develop a network of open universalities/distance education institutions in the country in consultation with the State Governments and other concerned agencies, to identify priority areas in which distance education programmes should be organized and to provide such support as may be considered necessary for organizing such programmes and also to identify the specific client groups and the types of programmes to be organized for them, and to promote and encourage the organization of such programmes through the network of open universities/distance education institutions and also to promote an innovative system of University level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and organize various courses and programmes and also to promote the organization of programmes of humanresource development for the open university/distance education system and to initiate and organize measures for joint development of courses and programmes and research in distance education technology and practices. The Distance Education Council has also issued guidelines in the year 2006 for regulating the establishment and operation of Open and Distance Learning Institutions in India. The Institutions are required to give undertaking that the provisions of Distance Education Council shall be observed. The parent institution which intends to start or which has already started Distance Education Institutions should have a provision in its Act/MoA for running Distance Education Programme. The parent institution cannot establish its Study Centres/Regional Centres outside its jurisdiction as specified in the parent institution Act/MoA. The parent institution is required to monitor the academic standard and quality of Distance Education within the parent institution. 23. What emerges from the combined reading of Statute 28 of the Indira Gandhi National Open University Statutes and the powers and functions of the Distance Education Council is that there is no provision for providing technical education by way of distance education. The courses of B.Sc. Nursing and M.Sc. Nursing are very technical in nature. The candidates besides possessing theoretical knowledge are also required to obtain practical knowledge. The candidates admitted in regular courses of B.Sc., M.Sc./B.E. in Engineering and other technical courses in recognized institution have to attend the minimum number of lectures in theory as well as in practical examination. The knowledge acquired by the candidates through regular courses cannot be compared with technical qualification obtained by way of distance education. The Regulations framed by the Indian Nursing Council are very comprehensive vis-?-vis the Regulations framed by the Indira Gandhi National Open University for awarding B.Sc. Nursing degree. The recognized/valid institutions are required to comply with all the academic regulations framed by the Indian Nursing Council with regard to the syllabus, curriculum, appointments of teachers, eligibility criteria, staffing pattern, including building etc. The major difference which has already been taken note of is that the duration of B.Sc. nursing course is four years as per the academic

regulations framed by the Indian National Council and 3-5 years in case of Indira Gandhi National Open University. In the instant case, petitioner was admitted only for two years for the academic sessions 2007- 2008 and 2008-2009.

12. Their Lordships of the Hon''ble Supreme Court in *Annamalai University represented by Registrar Vs. Secretary to Government, Information and Tourism Department and others*, (2009) 4 SCC 590 have held that the distinction between a formal system and an informal system is in the mode and manner in which education is imparted. Their Lordships have held as under: "40. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible. 41. Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect."

13. What emerges from the analysis made hereinabove is that for two academic years, i.e. 2005-06 and 2006-07, there was no recognition by the Indira Gandhi National Open University. Moreover, the technical courses like Physiotherapy cannot be undertaken by way of distance education. In view of this, there is no illegality or arbitrariness in the action of the respondents in denying the appointment to the petitioner to the post of Physiotherapist."

21. Coming to the facts of this case, the University was granted one time post facto approval only upto 2005 and thereafter the said University has been granted provisional recognition for one academic year, i.e. 2007-08. Petitioner appeared in the examination in the academic sessions 2005-2006 and 2006-2007, in which there was no recognition by Indira Gandhi National Open University. In this view of the matter, the aforesaid judgment aptly applies to the facts of this case also. In the present case also, the University which purportedly has issued the certificates in favour of the petitioner was not having any recognition in between 2005 and 2007, therefore, the diploma/degree certificates which have been obtained by the petitioner from the said University cannot be said to have been obtained by him during the academic session for which the said courses being run by the University were recognized either provisionally or post facto.

22. Therefore, in view of the discussion held above, I do not find any merit in the

petition and the same is dismissed, so also miscellaneous applications, if any. No order as to costs.