

(2004) 03 AP CK 0114
In the Andhra Pradesh High Court
Case No : Writ Petition No. 25246 of 2003

B. Krishna Rao

APPELLANT

Vs

M. William Carey and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 3
Pharmacy Act, 1948 — Section 10, 2
University Grants Commission Act, 1956 — Section 3

Citation : (2004) 3 ALD 222 : (2004) 3 ALT 579

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : P.V.S.S.S. Rama Rao, for the Appellant; G. Vidyasagar and Government Pleader for Education for Respondent Nos. 2 and 3, for the Respondent

Judgement

Bilal Nazki, J

1. This is a writ petition filed against the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A. No. 8393 of 2000 on 17.11.2003, 4th respondent before the Tribunal is the writ petitioner herein and the applicant before the Tribunal is 1st respondent in this writ petition.

2. The 1st respondent challenged the promotion of the writ petitioner as Head of Section, Pharmacy vide G.O. Rt. No. 669, dated 20.9.2000 on the ground that it was illegal, arbitrary and contrary to the Education Regulations, 1991 framed under Pharmacy Act, 1948. The 1st respondent contended that he possesses Master of Pharmacy and was appointed as an Associate Lecturer which was later redesignated as Lecturer. He was now working as a Lecturer in Pharmacy, SGPR Government Polytechnic College, Kurnool. For promotion to the post of Head of Section in Polytechnic, a candidate should possess a degree in the respective branch as per the rules framed in G.O. Ms. No. 1146, GAD, dated 13.9.1961. Thereafter, by G.O. Ms. No. 1845, dated 29.7.1966, the Government framed ad

hoc rules for filling up the post of Head of Section and Lecturer in Pharmacy. These rules were made applicable to the pharmacy courses also. On the other hand, the writ petitioner had a Diploma in Pharmacy. He acquired BS and MS (Pharmacy Operations) from BITS Pilani which was not considered as equivalent to B. Pharmacy/M. Pharmacy for promotion to the post of Head of Section in Pharmacy Department by the Government. The writ petitioner approached the Tribunal by way of filing O.A.No. 5618 of 1996. The O.A. was disposed of by the Tribunal directing the Government to consider the claim of the writ petitioner. In the meantime the Pharmacy Council of India vide its letter dated 28.4.1997 made it clear that BS/MS (Pharmacy Operations)/MS degrees of BITS, Pilani were not equivalent to B.Pharm/ M.Pharm degree for appointment as teaching staff under the Education Regulations, 1991. On 9.11.1998 the Pharmacy Council of India also informed that BS or MS conducted by BITS, Pilani was not approved as a degree. Therefore the case of the 1st respondent was that since the writ petitioner did not have the basic qualifications which would make him eligible for the post of Head of Section, his appointment was bad.

3. Now the question which falls for determination is whether the writ petitioner was eligible to be appointed as Head of Section or not. The Tribunal agreed with the 1st respondent, quashed the appointment of the writ petitioner who has filed this writ petition. It is not disputed that the writ petitioner has acquired BS and MS (Pharmacy Operations) through distance education system. It is also not disputed that BITS, Pilani is not a recognized institute for the purpose of granting BS and MS (Pharmacy Operations). It is also not disputed that BS and MS (Pharmacy Operations) which the writ petitioner has obtained from BITS, Pilani have not been recognized by Pharmacy Council of India as degrees equivalent to B.Pharm/M.Pharm which are required to make a candidate eligible for the post of Head of Section in Pharmacy. In this factual background, the relevant provisions of law will have to be examined, but before going to that, it may be stated that the writ petitioner has challenged the order of the Tribunal mainly on three grounds:

- (1) That the provisions of Pharmacy Act, 1948 would not apply as far as the selection of the writ petitioner is concerned;
- (2) That the appointment of the writ petitioner has to be tested in accordance with the provisions of the All India Council for Technical Education Act, 1987, as the institution in which he was working was a recognized institution under the All India Council for Technical Education Act, 1987;
- (3) That the 1st respondent had no locus standi to file the OA because in case the writ petitioner is not appointed, the 1st respondent will not be the person who would be considered for appointment.

4. Learned Counsel for the respondents, on the other hand, submits that since the degree granted to the writ petitioner has neither been recognized by the University Grants Commission nor was it approved by the Pharmacy Council of

India as a degree equivalent to B. Pharmacy/M. Pharmacy, the writ petitioner could not be appointed to the post of Head of Section. He further contends that even if it is agreed that the Pharmacy Council of India cannot lay down the norms and qualifications of candidates for appointment of lecturers and head of units, but the Pharmacy Council of India is within its powers to lay down the standards in order to see that the institutions are run in accordance with aims and objects of the Pharmacy Council of India Act, Now in the light of these rival contentions, it is necessary to go through certain provisions of some of the statutes. University Grants Commissions Act, 1956 (for short "UGC Act") was enacted in order to achieve co-ordination and determination of standards in Universities. Section 2(f) of the UGC Act defines the University:

"University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act."

5. In Chapter IV u/s 22 right has been granted to the universities to confer degrees. Under Sub-section (1) of Section 22 it is laid down that the right of conferring or granting a degree would only be exercised by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act. Subsection (3) of Section 22 prohibits persons and authorities to confer or grant any degrees except those who are entitled to do so under Sub-section (1). The degrees which can be conferred or granted by the universities established under a Central Act, a Provincial Act or a State Act have to be notified under Sub-section (3) of Section 22 through an Official Gazette. It may be worthwhile to mention that Sub-section (3) was added by an amendment and the objects and reasons for such amendment were as follows:

"There are various institutions in India other than Universities which are granting diplomas and degrees. The Committee are of opinion that it would be sufficient if a list of recognized degrees is published and institutions other than Universities are debarred from granting any such recognized degrees. To give effect to this intention a new Sub-clause (3) has been inserted."

6. Therefore in order to show that a particular degree is a degree, it has to be shown that the degree obtained by a candidate and the institution from which it is obtained by the candidate is notified by the University Grants Commission in an Official Gazette in terms of Sub-section (3) of Section 22 of the UGC Act.

7. Now coming to the All India Council for Technical Education Act, 1987 (for short "AICTE Act"), this Act was enacted with an object that statutory powers should be there to regularize and maintain standards of technical education in the country. Technical Education is defined in Section 2(g) of the AICTE Act which lays down:

"Technical education means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy

and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;"

8. According to the learned Counsel for the writ petitioner, any course in pharmacy is a technical education within the meaning of the AICTE Act and if a degree is recognized by such Act, no other Act would apply. But we have gone through whole of the Act, it does not lay down as to which of the degrees would be recognized and which of the degrees would not be recognized. As a matter of fact, whole scheme of the Act is to see that the technical institutions are run in accordance with the scheme so that high standards of education are maintained. Technical institution is defined in Section 2(h) which is as follows:

"Technical institution means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council by notification in the Official Gazette, declare as technical institutions."

9. As a matter of fact, a technical institution is excluded from the definition of University and primarily the AICTE Act deals with the maintenance of the standards in the technical institutions established under the Act. Council is established u/s 3. Function of the Council are given in Section 10. One of the functions of the Council is 10(i) which lays down:

"lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations."

10. Going by Sections 3 and 10 of the AICTE Act, it nowhere suggests that under this Act the Council has any power to see whether a particular degree is a recognized degree or not. u/s 10(i) it can prescribe the qualifications for the staff in order to see that the institutions established under the Act maintain a particular standard. It is basically concerned with maintenance of standards of technical institutions and no technical institution can be run without the approval of the Council created under the Act. After an institution is recognized by the Council under the Act, the granting of degree or diploma is a function which is assigned to other institutions and not to the Council of technical education and in our view this is a function of the UGC.

11. Now coming to the Pharmacy Act, 1948, we agree with the learned Counsel for the writ petitioner that this Act does not lay down any norms for education of B. Pharmacy and M. Pharmacy. It basically deals with granting of diplomas. This Act has been enacted in 1948. In Section 2(e) a university has been defined as a university within the meaning of Section 3 of the UGC Act. u/s 3 Central Council can be constituted. Section 10 lays down education regulations which is quoted below:

(1) "Subject to the provisions of this section, the Central Council may, subject to

the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a Pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the 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.

(4)

(5)

(6)"

12. u/s 12 the Council can grant approval to the courses of study and examinations with respect to the pharmacists. This leaves no room to doubt that the Act is primarily intended to regulate the functioning of the institutions which grant a qualification which is minimum for registration as a pharmacist. Section 18 of the Act also gives power to the Council to make regulations. Regulations for the diploma course in pharmacy have been made in 1991. They are known as "Education Regulations, 1991". Regulation 2 lays down:

"Qualification for Pharmacist :--The minimum qualification required for registration as a pharmacist shall be a pass in Diploma in pharmacy (Part I & Part II) and satisfactory completion of Diploma in Pharmacy (Part-III).

Or

Any other qualification approved by the Pharmacy Council of India as equivalent to the above."

13. Therefore it becomes quite clear that this Council deals with only institutions which grant a diploma which is the minimum qualification required for registration as a pharmacist under the Act, but no institution can grant a diploma in pharmacy unless the minimum standards prescribed by the Council under this Act are maintained. Regulation 9 lays down,

"the course of regular academic study prescribed under regulation 7 shall be conducted in an institution, approved by the Pharmacy Council of India under Sub-section (1) of Section 12 of the Pharmacy Act, 1948."

14. It is further laid down that the Pharmacy Council of India shall not approve an institution under this regulation unless it provides adequate arrangements of

teaching in regard to building accommodation, equipment and teaching staff as specified in Appendix-B. Now Appendix-B lays down minimum requirements for institutions to get recognized. It also lays down under (B) the qualifications for the staff which an institution should have before it gets recognition and approval. The minimum qualifications prescribed for the principal/Director/Head of Institution/Department (Professor/Reader) are mentioned and the qualifications are basic degree in Pharmacy and Post-graduate in any discipline of Pharmaceutical Sciences with not less than 5 years experience in teaching. Unless a person possesses these qualifications and is a head of the unit, the institution itself cannot be run for granting the diplomas. Therefore the Pharmacy Council of India is not at all directly connected with granting of degrees in pharmacy and post graduation degrees, but it has to ensure that the staff of the institutions, which accord diplomas, is qualified in accordance with regulations made. Therefore it becomes important that any person appointed as Principal/Director/Head of Institution should have a degree in Pharmacy and post graduation in any discipline of Pharmaceutical Sciences and that degree should be recognized by the UGC in terms of the UGC Act. We have not been shown any notification issued with respect to the BITS, Pilani in terms of Section 3 of the UGC Act that the degrees and post-graduation degrees granted by the BITS, Pilani through correspondence course are notified degrees. In the absence of such notification we do not think that the writ petitioner is qualified in terms of the Education Regulations, 1991.

15. The learned Counsel for the writ petitioner has referred to various G.Os. which, in our view, cannot detain us any further and we are not going to analyse those G.Os. in view of the fact that the G.Os. issued by the State Government cannot supercede the provisions of the UGC Act, AICTE Act or the Pharmacy Act, 1948. It is needless to say that the Pharmacy Council of India had also taken a plea before the Tribunal that the degree possessed by the writ petitioner was not recognized by them as a degree equivalent to B. Pharmacy/M. Pharmacy degree and they had communicated it even to BITS, Pilani on 19.10.1994. By another letter dated 28.4.1997 to Principal Secretary, Education Department, Government of Andhra Pradesh, Hyderabad the Pharmacy Council of India had stated:

"With reference to the subject cited above, I am directed to inform that the Council has not approved the B.S. and M.S. (Pharmacy Operations) Degrees of B.I.T.S., Pilani as equivalent to B. Pharm. and M.Pharm. Degrees for appointment as teaching staff under the Education Regulations, 1991."

16. Another letter dated 9.11.1998 was addressed by the Pharmacy Council of India which says:

"I am directed to bring to your kind notice that the Pharmacy Council of India in its meeting held on 19th Sept., 1998 at Coimbatore has decided that Off Campus Distance Learning in Pharmacy operation i.e., B.S. or M.S. conducted by Birla Institute of Technology and Science, Pilani, Rajasthan or by any other Institution/

University, shall not be approved as a policy for any purpose by the Pharmacy Council of India."

17. When this letter was read at the bar and on our enquiry as to what would be the meaning of the distance learning, we were told that the degrees are obtained through a correspondence course. We do not understand how a Master's degree in Pharmacy can be granted through correspondence. After all this is not a degree in a subject like history or Hindi, it needs a lot of practical training and most of the work prescribed would have to be done in laboratories, but we are not basing our decision on this apprehension because we are conscious that the decision of recognizing a particular degree has to be left to the experts committee.

18. There is a letter dated 4.5.1993, which is not given by UGC, but by Association of Indian Universities which says that the BITS, Pilani is a deemed university under UGC Act. Even if that is taken to be true, even then there is nothing on record to show that the degree of B. Pharmacy and M. Pharmacy given by BITS, Pilani are notified degrees in terms of Section 3 of the UGC Act. The learned Counsel for the writ petitioner also relied on some letter issued by State Board of Technical Education and Training, Hyderabad dated 23.3.1992. The conclusions of this letter are based on the report of an expert committee. It says in para-3:

"In respect of B.S. Pharmacy operation and M.S. Pharmacy operation, the course content is about 75% of B. Pharmacy and M. Pharmacy respectively offered in the Universities. The degrees of B.S. and M.S. in Pharmacy operations could be considered as equivalent to B. Pharmacy and M. Pharmacy of Universities of A.P., taking into consideration the knowledge acquired at entry qualification (i.e., in service Diplomas in Pharmacy working in polytechnics) and professional experience of 5 years stipulated for admissions."

19. This letter makes an interesting reading. The expert committee does not even say that the degrees in B.S. and M.S. in Pharmacy are equivalent to the degrees granted by the Universities of A.P. It says that the degree in B.S. and M.S. in Pharmacy along with five years professional experience should be taken as equivalent to degrees in B. Pharmacy and M. Pharmacy granted by the Universities of A.P. The learned Counsel for the writ petitioner has also submitted certain documents, one of them being a copy of letter from Distance Education Council, Indira Gandhi National Open University, New Delhi which says that they did not make any distinction between degrees awarded through formal and distance education mode. These documents, in our view, are not going to come to the rescue of the writ petitioner.

20. Now coming to the judgments relied on by the learned Counsel for the respondents, in a judgment of a Division Bench of this Court reported in K. Sifhora Vs. District Educational Officer Kurnool District, Kurnool and other, there was a dispute whether Hindi Sikshak course of Karnataka State was equivalent to

B.Ed. or Pandit Training course recognized by the Government of Andhra Pradesh. The Court held that it was for the expert committee whether they were equivalent or not. Therefore this judgment would not lead us any where to decide the present controversy. He also relied on a judgment of the Supreme Court reported in Bharathidasan University v. All India Council for technical Education (2001) 8 SCC 676, which is also not relevant for the purpose of the present controversy. But even in this judgment in Para-10 it has been held that AICTE is only an advisory, recommendatory body as far as the Universities are concerned for the purpose of maintaining appropriate standards and qualitative norms. Another judgment of the Supreme Court reported in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , is also not relevant for the purpose of the present controversy.

21. For the reasons given hereinabove, we dismiss the writ petition and uphold the order of the Tribunal.