
(2003) 04 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3593 of 2002

B. Laxmi and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10
Pharmacy Act, 1948 — Section 29

Citation : (2004) 2 ALD 36 : (2003) 6 ALD 425 : (2003) 5 ALT 715

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : A. Satya Prasad, for the Appellant; Government Pleader, for Higher Education for Respondent Nos. 1 and 2, C. Kondandaram, SC for JNTU for Respondent No. 3, Deepak Bhattacharjee, SC for Pharmacy for Respondent No. 4 and K. Govind, SC for State Council India of Pharmacy, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The petitioners 26 in number filed this writ petition to issue a writ of mandamus directing respondents 1, 2 and 3 to take steps for conferring the approval of the B.Pharmacy degrees obtained by them consequently directing the Pharmacy Council of India to confer approval on the degrees obtained by the petitioners in pursuance of the final examinations held in the month of August, 2001.

2. The 6th respondent College of B.Pharmacy, Cuddapah was started in the year 1997 duly obtaining sanction from the All India Council for Technical Education (AICTE) and the Government of Andhra Pradesh. The admissions were made by the Commissioner, Admissions, Government of Andhra Pradesh. All the petitioners herein are the first batch of students admitted in the 6th respondent-college basing on the ranks secured by them in the EAMCET-1997 examination. The examinations were conducted by the Jawaharlal Nehru Technological University-3rd respondent and the petitioners passed the examinations and also

degrees were awarded in favour of the petitioners by the 3rd respondent. However, the University has withdrawn affiliation with effect from the academic year 2001 onwards but the degrees obtained by the petitioners from the Jawaharlal Nehru Technological University-3rd respondent have not been approved by the Pharmacy Council of India-4th respondent. Hence the petitioners filed this writ petition for a direction directing the Pharmacy Council of India to confer approval on the degrees obtained by them pursuant to the degrees awarded by the 3rd respondent.

3. The brief facts that gave rise to filing of this writ petition are as follows: The AICTE vide its letter dated 22-9-1992 accorded approval to the 6th respondent-college to conduct degree course of B.Pharmacy with annual intake of 40 for the session 1997-98. The duration of the course is for four years. The approval has been accorded as per the norms and standards of AICTE. AICTE accorded approval after consultations with the State Government and the affiliating University of Jawaharlal Nehru Technological University and on the recommendation of the Regional Committee and the Expert Committee constituted by the Council as per the provisions of AICTE regulations. It is stated that the admissions will have to be made in accordance with the regulations notified by the AICTE and any infringement/contravention/non-compliance of the norms and standards as prescribed by AICTE, the Council shall take further steps to withdraw the approval and the liability arising out of such withdrawal of approval will be solely that of the Management of the 6th respondent-institution. The said approval was granted for one academic session of 1997-98. The AICTE requested the State Government to monitor the progress made by the institution for fulfillment of norms and standards of the Council and keep the concerned Regional Office and AICTE informed. Based on the said approval, the State of Andhra Pradesh issued order in G.O. Ms. No. 300 Education (EC-II) Department dated 24-9-1997 according permission for establishment of B.Pharmacy college with an annual intake of 40 for the academic year 1997-98 by the Management of the 6th respondent-institution to conduct the degree course in B.Pharmacy. The petitioners have appeared for the entrance examination of EAMCET-1997 and obtained ranks for the purpose of admissions into B.Pharmacy course and some of them have appeared for the entrance examination for the Pharmacist and admitted into the 6th respondent-college. 23rd petitioner was under the NRI quota. All the petitioners duly admitted for admission into B.Pharmacy course in the year 1997 in pursuance of the entrance examination conducted by the 3rd respondent-University and in the Counseling all the petitioners were allotted to the 6th respondent-college. On securing the admissions, all the petitioners have joined in the 6th respondent-college as directed by the Jawaharlal Nehru Technological University. The 3rd respondent-Jawaharlal Nehru Technological University has conducted examinations for all the four years i.e., 1997-98, 1998-99, 1999-2000 and 2000-2001. The final examinations were held in the month of August, 2001 under the supervision of the External Examiners/Invigilators. It is stated that after conducting the final examinations in August,

2001, the University declared the results of all the petitioners and all the petitioners have succeeded in the said examinations and the University also issued provisional certificates to the petitioners. It is stated that though B.Pharmacy certificates have been issued by the 3rd respondent, the said certificates have not been recognised by the 4th respondent-Pharmacy Council of India. The AICTE also approved the 6th respondent-college of B.Pharmacy for the next academic years i.e., 1998-99, 1999-2000, 2000-2001. It is stated that the AICTE vide its letter No. 730-50-038 (P)/ET/97 dated 25-9-2000 accorded extension of the approval of the 6th respondent-college of B.Pharmacy for the B.Pharmacy course for the academic year 2000-2001 on consideration of reports of the Expert Committee and in consultations with the concerned agencies in that regard. The AICTE vide its proceedings No. A2/430/PRRM/99-2000 dated 8-1-2001 accorded provisional affiliation to the 6th respondent-college of B.Pharmacy for the academic year 1998-99 for running B.Pharmacy II/IV classes subject to affiliation by the Executive Council of the University. It is stated in the said order that the 6th respondent-college was given temporary/provisional affiliation for running B.Pharmacy I/IV classes during the academic year 1997-98 vide its proceedings dated 19-11-1997 and the college requested for the grant of affiliation to run B.Pharmacy II/IV classes for the academic year 1998-99. The Expert Committee constituted by the University recommended vide its report dated 2-11-1999 while asking the college to rectify certain defects and the said defects were rectified by the college and as per the recommendations of the Vice-Chancellor, the temporary and provisional affiliation for running the B.Pharmacy II/IV year degree course for the year 1998-99 was accorded subject to certain conditions.

4. The learned Counsel appearing for the petitioners submits that the petitioners were allotted pursuant to the ranks secured by them in the entrance examination for admitting them into B.Pharmacy course to the 6th respondent-college and the 6th respondent-college was permitted to conduct degree course in B.Pharmacy and accordingly the petitioners have completed 4 years B.Pharmacy degree course for the academic years from 1997-98 to 2000-2001. But after completion of the degree course, they came to know that the Pharmacy Council of India (4th respondent) is not going to approve the degrees awarded to the petitioners. It is stated that unless the Pharmacy Council of India approves the degrees awarded to the petitioners by the 3rd respondent-University, their names will not be entered by the State Pharmacy Council in the register maintained by it and the degrees awarded to them are without any use and unless the Pharmacy Council of India-4th respondent recognizes their certificates, their certificates will be invalid and they will not be entitled to make use of their degrees in any manner. It is stated that for no fault of the petitioners, they cannot be suffered and if there are any deficiencies in the infrastructure and for non-fulfilling the norms and conditions by the 6th respondent, the degrees obtained by them cannot be held to be invalid. It is stated that the most of the petitioners have passed the B.Pharmacy examination conducted by the University in August, 2001 in first

Class with distinction, and therefore, it cannot be said that the petitioners have not acquired the required knowledge and qualification of B.Pharmacy 4 year degree course.

5. The learned Counsel appearing for the Pharmacy Council of India-4th respondent submits that the Pharmacy Council of India is a statutory body under the Pharmacy Act, 1948 and unless the prescribed standards of education required for qualification as a Pharmacist is fulfilled as per the educational regulation and unless the course is approved by the Pharmacy Council of India, the degrees conferred by the 3rd respondent-University, cannot be recognized for entering the names of the petitioners in the register maintained by the Pharmacy Council of India. It is further stated that the Jawaharlal Nehru Technological University-3rd respondent vide its letter dated 22-12-2001 intimated the Pharmacy Council of India that (a) due to inadequacies of the various facilities in the college, affiliation to the 6th respondent institution has been withdrawn (b) to accommodate the students within the same University in any other affiliated college, the students II, III and IV have been transferred to Bapatla College of B.Pharmacy, Bapatla, being the oldest institution having necessary approval from the Council and necessary facilities to conduct the course for additional batch (c) requested to ratify the transfer of the students as one time measure due to exigency. The said request of the University has been placed in the Executive Committee of Pharmacy Council of India in its meeting held in February, 2002 in which it was decided to verify the facilities at Bapatla College of Pharmacy for the additional intake. It is further stated that the other letter dated 22-12-2001 addressed by the Jawaharlal Nehru Technological University requesting the Pharmacy Council of India to accord approval of Pharmacy Council of India to the degrees awarded to the petitioners during the academic year 2001 as a special case was not received except the letter dated 22-12-2001 bearing the same letter number from the 3rd respondent-University for transfer of the students of II, III and IV years to Bapatla College of Pharmacy. It is stated that though the 5th respondent has full sympathy for the petitioners but the approval cannot be granted to the degrees obtained by them in the absence of the compliance of the statutory requirement by the 6th respondent-institution. It is further stated that the recognition is dependant upon the prerequisite of fulfilling the necessary criteria and has to be prior in time rather than being given later after the examinations are conducted for the students who have studied with inadequate infrastructure. A candidate, who has not passed out of an approved course of study and examination for Pharmacists, cannot be allowed to handle the drugs and, therefore, their names cannot be registered recognizing their degrees, as the 6th respondent institution B.Pharmacy is an unapproved institution by it.

6. The 5th respondent-State Pharmacy Council states that as per the Pharmacy Act, 1948, the Pharmacy Council of India was constituted which is entitled to prescribe minimum standards of education and approved course of study and examination for the Pharmacists. The State Government constituted the State Pharmacy Council, which will be responsible for the maintenance of the said

register of qualified Pharmacists. According to Section 29 of the Pharmacy Act, 1948, the State Council shall maintain the required register of the Pharmacists. The Central Council of the Pharmacy makes the education regulations prescribing minimum standard of education required for qualification as Pharmacists. The authority of the State which conducts the course of study of Pharmacists has to apply to the Central Council for approval of the course and the Central Council after satisfying itself may declare the examination to be an approved examination for the purpose of qualifying for registration as a Pharmacist under the Pharmacy Act, 1948.

7. The Pharmacy Act, 1948 is enacted to make better provisions for the regulation of profession and practice of Pharmacy and for the purpose of Pharmacy Councils. The Pharmacy Council of India is empowered to make regulations subject to the approval of the Central Government prescribing the minimum standard of education required for qualification as a Pharmacist. Any authority in a State, which conduct a course of study for Pharmacists, shall apply to the Central Council of India for approval of the course and the Central Council if satisfies after such enquiry, shall approve the course of study for the purpose of admission to an approved examination for Pharmacist. The Central Council may withdraw the course also after giving notice to the State authority. The Central Council may also declare such qualification for the purpose of qualifying for registration under the Act granted by the outside authorities of the Indian Territory.

8. Thus, a reading of the Pharmacy Act, 1948, makes it clear that the Central Council is empowered to make regulations prescribing minimum standard of education required for qualification as a Pharmacist, the subjects of examination, standards thereon to be attained, the nature and period of study and of practical training to be undertaken before admission to an examination, equipment and facilities to be provided for students undergoing approved courses of study. It is not the case of the 4th respondent that the conduct of B.Pharmacy course by the A.P. State authorities was not approved course of study imparted by the 6th respondent-college of B.Pharmacy, Unless it was approved course of study, the question of granting recognition by AICTE and giving permission by the State Government to conduct the course of B.Pharmacy by the 6th respondent does not arise. Respondents 1 to 3 are the State authorities and have permitted the 6th respondent to impart education of B.Pharmacy and if the authorities i.e., respondents 1, 2 and 3 have permitted to conduct the course of B.Pharmacy study for the Pharmacists contrary to the approved course, it is for the Pharmacy Council of India to withdraw the approval from conducting the said course by the State authorities but for no fault of the petitioners, the degrees granted by the 3rd respondent-University cannot be nullified. As a matter of fact, the course of study conducted by the 6th respondent institution for the students of II, III and IV year has been recognized whose admissions have been transferred from the 6th respondent-college to the Bapatla College of B.Pharmacy, Bapatla. If that be so, the petitioners, who are the students of first batch of the 6th respondent

college and who have passed the course of I, II, III and IV year of B.Pharmacy and they have passed in distinction in the examinations conducted by the Jawaharlal Nehru Technological University and, therefore, there is no justification on the part of the 4th respondent in recognizing II, III and IV year batches and in not recognising the first batch students. The All India Council for Technical Education Act, 1987 which is enacted subsequent to the Pharmacy Act, 1948. Both the Acts are the Central Acts and the legislative competency of the same is referable to Entry 66 of List-I of VII Schedule of the Constitution of India. The AICTE Act also covers the same field, which was earlier covered by Pharmacy Act, 1948. The AICTE is vested with the statutory authority for planning, formulation and maintenance of norms and standards and integrated development of technical and management education. u/s 10 of the AICTE Act, 1987, it is the duty of the AICTE to take all such steps as it may think fit in ensuring the co-ordination and integrated development and technical and management education and the maintenance of standards and for the purpose of performing its function under the Act, the Council may lay down the norms and standards for course physical and infrastructure facilities and staff pattern and staff qualifications, quality, instructions, assessment and examination and accord the approval for starting new technical educational institutions and for introduction of new course or programme in consultation with the agencies concerned. The AICTE granted approval for starting B.Pharmacy College by the 6th respondent and the said course conducted by the 6th respondent was approved by the AICTE as well as the State Government and the 3rd respondent-University. Therefore, it cannot be said that B.Pharmacy course conducted by the 6th respondent-college after getting approval by the concerned authorities is invalid.

9. Admittedly, the University withdrawn the affiliation granted to the 6th respondent-institution from the academic year 2001 onwards only and transferred the students of the 6th respondent-college to Bapatla College of B.Pharmacy, Bapatla. It is not the case of the 4th respondent that AICTE has no power or authority to permit for conducting the degree course in B.Pharmacy. Under the AICTE Act, the AICTE is empowered to grant affiliation and after satisfying the norms and the reports of the concerned authority, the AICTE accorded provisional affiliation subject to certain conditions and for not fulfilling the said conditions subsequently by the 6th respondent-college of B.Pharmacy cannot be a ground to refuse to recognise the degrees obtained by the petitioners by the 4th respondent. The action of the 4th respondent while permitting the other batch of students to continue their course of study while refusing to recognize the degrees obtained by the petitioners is illegal, discriminatory and without any reason.

10. For the aforesaid reasons, 4th respondent is directed to confer approval of the degrees obtained by the petitioners in pursuance of the final examinations conducted by the 3rd respondent-University.

11. The writ petition is accordingly allowed. There shall be no order as to costs.