
(1989) 10 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9981 of 1989 and Civil Miscellaneous No. 15389 of 1989

Daulat Ram Charitable Trust and another APPELLANT

Vs

State Board of Technical Education, Haryana and others RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 1, 10, 10(1)
Constitution of India, 1950 — Article 154, 162, 166, 19(1)
Pharmacy Act, 1948 — Section 12, 12(1), 46

Citation : AIR 1990 P&H 292 : (1991) 1 ILR (P&H) 214

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : R.S. Mongia and R.L. Gupta, for the Appellant; G.C. Garg Ms. Anita Gupta and Naubat Singh Panwar, S.C. Mohanta, Advocate-General, for the Respondent

Judgement

1. This judgment will also dispose of CWP Nos. 11525, 11566, 12033, 11769, 11768 of 1989 as the question involved is common in all these cases.

2. The challenge in these writ petitions is to the order Annexure P.2 dated July 13, 1989, passed by the Director, Technical Education, Haryana, threatening thereby that any student seeking admission to any institute/ polytechnic direct would be doing so at his own risk and responsibility, and the examination of such students would not be conducted by the State Board of Technical Education Haryana, etc.

3. The petitioner is a registered charitable trust known as "Daulat Ram Charitable Trust" which is running Maharishi College of Pharmacy, Taraori, District Karnal. The said College is running classes for Diploma in Pharmacy with effect from session 1984-85. The college and the course of study conducted by the college has been approved by the Pharmacy Council of India, as provided under the Central Act known as Pharmacy Act, 1948. The said college is absolutely private and unaided and not a single paise is received by it either in the form of

aid or by reimbursement of salaries paid by the college to its teaching staff or in any other manner either from the State Government or the Central Government or any of their instrumentalities or agencies.

4. Imparting instructions to the students of Diploma in Pharmacy and their registration, etc., are governed by the said Pharmacy Act of 1948, under S. 10 of which the Pharmacy Council of India (hereinafter called the Central Council), with the approval of the Central Government, has framed Education Regulations vide notification dated 8th July, 1982. The Act and the Education Regulations framed under the Act provide for a complete Code of Conduct for academic study for Diploma in Pharmacy and its subsequent registration. The Act and the Education Regulations, inter alia, clearly provide as to who will conduct the course of study for pharmacists and who would conduct the examination of the students admitted to the course, the nature and period of study and the practical training to be undertaken before admission to examination, the subjects of examination and the standard to be attained therein, etc.

5. It is further pleaded that under S. 12(1) of the Pharmacy Act 1948 and regulation? of the Education Regulations, the Pharmacy College Taraori has been approved by the Pharmacy Council of India for conducting two years course of diploma in pharmacy. Similarly under S. 12(2) of the Act and regulation 12, respondent No. 1, i.e, the State Board of Technical Education Haryana (hereinafter called the Board) has been approved as the examining authority by the Pharmacy Council of India for conducting examination of the students admitted to the college. It is further pleaded that two altogether independent and separate authorities have been created one for conducting the course of study for Pharmacists and the other for holding examinations for that. The college and the examination body are supreme in their spheres of working and they owe their existence to the Pharmacy Council of India.

6. The abovesaid college of Pharmacy invited applications from the students desirous of seeking admission to the diploma course of pharmacy for which the last date was 8th July, 1989. After holding interviews for the admissions, 120 students were selected for admission for the session 1989-90. They deposited their fees between July 9 and 16, 1989. Intimation to this effect was sent to the Board by the college vide letter Annexure PI dated 21-7-89. However, the college received order Annexure P2 dated 13th July, 1989, that the admissions to all the diploma courses in respect of all private institutions as well as Government institutes for the session 1989-90 shall be made centrally at Ambala and that any institution violating the said order shall be liable for disaffiliation. After this, another letter was received from the Director, Technical Education Haryana (copy Annexure P3) dated 25-7-1989, intimating that the admission of 120 students to -the two year diploma course in pharmacy for the session 1989-90 made by the college has been declared null and void, as the college made the admissions at its own level.

7. It is Annexures P2 and P3 which have been challenged through this petition,

inter alia, on the following grounds:--

(i) that the State Board of Technical Education Haryana is only an examining body, and not competent to pass the impugned orders Annexures P2 and P3, and lay down any policy for mode of admission to Pharmacy colleges approved by the Pharmacy Council of India;

(ii) that the agenda regarding the mode of admission as mentioned in Annexure P2 and for making the admissions centrally throughout Haryana in Pharmacy Colleges has not been placed before the Board of Directors of the State Board of Technical Education Haryana or any competent body of the Board empowered to decide such like matters. It seems that the Director, Technical Education Haryana has passed the order Annexure P2 of its own;

(iii) that the subject of co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions is mentioned at entry No. 66 as per List No. 1 of 7th schedule of the Constitution of India. Neither the legislative nor the executive power of the State can be exercised to the co-ordination of technical institutions. The whole policy of laying down the criteria for making selection for admission to the Pharmacy colleges at the central level throughout Haryana is ultra vires of entry 66 of List I of 7th schedule of the Constitution of India.

(iv) that the admissions to the college for the session 1989-90 have already taken place and the impugned policy, if any, as mentioned in Annexure P2 could not be made effective for this session.

(v) that the Pharmacy Act, 1948 envisages two separate and independent authorities.--(i) for conducting the course of study for pharmacists, and (ii) for holding the examination in Pharmacy, and the Board has neither the power of supervision nor of control over the fields or spheres of the body conducting the course;

(vi) that the petitioner-college has the right to manage and decide the mode of admission, and the respondents have no right to interfere with the rights of the college. The impugned policy Annexure P2 infringes the rights of the college and is, therefore, violative of Art. 19(1)(g) of the Constitution.

8. In the return filed on behalf of respondent No. 1 -- Board, certain preliminary objections have been taken, one of them being that the petitioner knew before hand that the admission was to be made centrally, and in the centralised admission, the admission was to be made on merit ignoring capitation fee. In spite of that, the admissions were made by the college at its own level in contravention of the directions of the Board and the State Government, and, thus, the petitioner acted with mala fide. It is further stated that the Government of India has enacted All India Council for Technical Education Act, 1987 (Act No. 52 of 1987) according to which before starting the course of Pharmacy, approval of All India Council for Technical Education is necessary. The said Council, vide its

letter dated 12-7-89 (copy Annexure R-Iv), has issued new guidelines which are to be followed by private technical institutes. Since the policy of centralised admission of the State Government is in conformity with the aforesaid Act, as it ensures admission on merit and not by taking donation/capitation fee, it deserves to be upheld. Thus, according to the respondents, the whole admission made by the petitioner college at its own level is unauthorised and, therefore, liable to be cancelled, and the students may be accordingly directed to apply for central admission.

9. As regards, it is mentioned that along with the Pharmacy Act, 1948, affiliation rules of the State Board of Technical Education have also to be followed. The Pharmacy Council of India, vide letter Annexure R-VII dated 21-3-89, has directed that the institutions desirous of starting Pharmacy course will have to give details of the examining authority and affiliation letter therefrom. Now the All India Council of Technical Education Act is applicable with regard to conduct of Pharmacy course. According to the return, neither in the Pharmacy Act nor in the Education Regulations has it been provided that the State Government has no locus standi to interfere with the admission of the College.

10. According to the stand taken in the return, for admission matters, concurrence and consent of Pharmacy Council of India is not required. The impugned orders are in conformity with the All India Council for Technical Education Act, 1987. The State Board of Technical Education being affiliating authority and the examining body is competent to lay down policy for making admissions. This action is in conformity with the All India Council for Technical Education Act, 1987. The State Government and the Board are competent to make policy for making admission to diploma courses, Engineering and non-Engineering and Pharmacy Courses for Government as well as Private Institutions being run in the State of Haryana. The decision of Central Admission has been taken by the Chairman of the Board under his special power described in rule VIII of Rules of Business of State Board of Technical Education, Haryana which provides that "In matters of emergency, the powers of the Board shall be exercised by the Chairman and such matters will be placed before the Board at its next meeting for ratification,

11. Learned counsel for the petitioner submitted that the matter stands concluded by this Court in C WP No. 6511 of 1986 (Ajay Kumar v, Haryana State Board of Technical Education etc.) decided on 9th March, 1987 in which it has been held that every candidate who satisfies the requirements and conditions laid down in regulation 10 is entitled to appear in the examination for diploma in pharmacy conducted by the Board. So, all students who produce certificates from the Heads of the Institutions approved for conducting Pharmacy courses in proof of their having regularly and satisfactorily followed the second year course of study by attaining not less than 75% lectures shall be eligible to appear in the examination for diploma in pharmacy. The Board has got no discretion to decline permission to such candidates to appear in the examination. It has further been

held that the student who are eligible according to these regulations, cannot be held or made ineligible to appear at the examination for Diploma in Pharmacy if they do not fulfil the requirements of the rules framed by the Board. Thus, argued the learned counsel, in view of the said judgment, orders Annexure P2 and P3 are liable to be quashed. He further submitted that u/s. 46 of the Pharmacy Act, the State can frame rules with a view to carry out the purposes of chapters 3, 4 and 5 which relate to the conduct of Pharmacists and their duties in relation to medical practitioners, the public and the profession of Pharmacy, whereas the Education Regulations framed u/s. 10 of the Act and the approved courses to study and examination provided u/s. 12 fall within chapter 2 of the Act, and, therefore, the State Government had no power to frame any rules with respect to these two matters. According to learned Counsel, since the examining body, i.e., the Board itself was approved u/s. 12(2) of the Act, it cannot deny that it would not conduct the examination of the students if they fulfil the requisite conditions for the examination. The alleged affiliation rules known as Rules for affiliation to the State Board of Technical Education Haryana have no statutory force. Moreover, in the rules itself, "institutions" means a technical institution which conducts a diploma/certificate course in any branch of engineering or technology duly approved by the Board, and that being so the said rules have no applicability to the Pharmacy institutions, and, consequently, the question of affiliation by the petitioner-institution did not arise. The All India Council for Technical Education Act, 1987 does not repeal the earlier Pharmacy Act. Both have got their separate fields of operation and one does not control the other. Even u/s 10 of the All India Council for Technical Education Act, the Council may grant approval for starting new technical institutions which means that the said Act does not apply to the earlier institutions. In any case, if there was any violation by the petitioner-institution the Board does not come into play in any manner and in the garb of affiliation rules the Board cannot deny to hold the examination of the students duly admitted by the petitioner-institution. As a matter of fact, according to the learned Counsel, no affiliation at all is required on the part of the petitioner with the Board, as per the stand taken in the return on behalf of the Board. He also submitted that since the matter falls under the Central subject at entry No. 66 of List No. 1 of the Constitution of India, the State Government could not frame any rules on the subject. In support of this contention he referred to *Minor P. Rajendran Vs. State of Madras and Others*, and *D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others*, . He also contended that the impugned order violates the fundamental right of the petitioner under Art. 19(1)(g) which cannot be taken away by executive fiat. In support of this contention, he cited the *The Sakharkherda Education Society, Sakharkheda and Others Vs. The State of Maharashtra and Others*, , *Sharda Education Trust Vs. State of Gujarat and Another*, , *D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others*, , *Dwarka Nath Tewari v. State of Bihar*. AIR 1959 SC 249 and *State of Kerala and Others Vs. P.J. Joseph*, .

12. On the other hand, learned Advocate General submitted that under the

Pharmacy Act and the Education Regulations framed thereunder, there is no provision as regards the admission to be made by the institution conducting the course. According to learned Counsel, in the absence of any such provision the State Govt. can frame the rules to fill in the gap in exercise of powers under Art. 162 read with Arts, 154 and 166 of the Constitution. He further submitted that the Board is not bound to conduct the examinations of those who have been authorized to conduct the course of study u/s. 12(1) of the Pharmacy Act. It was for the Board to conduct the examinations for the students of a particular institution and not for the Pharmacy Council of India to direct that the Board is bound to hold examination for a particular institution. He also submitted that in the absence of any law, executive powers could be made use of to fill up the lacuna, particularly in the case of admissions to the educational institutions. In support of this contention, he referred to *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, and *A. Muralidhar and Others Vs. The State of Andhra Pradesh*, .

13. As regards the judgment in CWP No. 6511/86, he submitted that the said case is distinguishable. In any case, LPA Nos. 338 and 339 of 1957 against that judgment are pending in this Court, and, so, the correctness of the judgment in CWP 6511/86 is under challenge. Moreover, since that field was not covered by the Pharmacy Act, it was for the State Government to frame rules for the said purpose. In the last, learned Advocate-General contended that no legal right of the petitioner had been violated nor was there any legal obligation on the part of the Board to hold examinations of the students admitted by the petitioner institution, and that no writ could be issued as prayed for.

14. After hearing the counsel for the parties, I am of the considered opinion that the present case is squarely covered by a decision of this Court in Civil Writ Petn. No. 6511 of 1986 (*Ajay Kumar v. Haryana State Board of Technical Education, Chandigarh*), decided on 9th March, 1987. Various provisions of the Indian Pharmacy Act and Education Regulations have been discussed in detail there in. In that petition, the students of Janta College of Pharmacy, Butana, District Sonapat sought direction that the Board be directed to allow them to sit in the December, 1986 examination. There the stand taken by the Board was that the students cannot claim regularisation of their admission in the II year which they got in collusion with the Principal of Janta College of Sonapat. The said contention was repelled and ultimately, it was held that "it is, thus, clear that the authority to grant approval to the course of academic study vests in the Council. It is the Council only which regulates the course of study which includes the commencement of the academic session, the duration of the session and other allied and related matters. The authority which conducts the examinations has no say in these matters. The powers and functions of the authority which holds examinations flow from and are regulated by regulations 8 to 10." It was further held therein, that it is clear from the perusal of the regulations that the courses

of regular academic study have to be conducted by the respondent No. 3 which has been approved for the purpose by the Council. The Council has the power of supervision and control over its affair. However, respondent No. 1 has no such authority. Every candidate who satisfies the requirements and conditions laid down in regulation 10 is entitled to appear in the examination for Diploma in Pharmacy (Part IIA) conducted by respondent No. 1. So all students who produce certificates from the head of the institution approved for conducting Pharmacy courses in proof of their having regularly and satisfactorily followed the second year course of study by attending not less than 75 per cent classes held and having successfully passed the examination for Diploma in Pharmacy (Part I) shall be eligible for appearing at the examination for Diploma in Pharmacy (Part IIA). Respondent No. 1 has no discretion to decline permission to such candidates to appear in the examination."

15. Similarly, in the present writ petition, the students have been admitted by the petitioner-Institution and if they fulfil the requirements of education regulations of 1981, they are entitled to be examined by the Board. Since the Board is the examining body under the Pharmacy Act read with Education Regulations, it could not control the admissions of the students by the petitioner-Institution which has been approved under S. 12(1) of the Indian Pharmacy Act by the Pharmacy Council of India. Under Regulation 7 the course of regular academic study given under Regulation 5 shall be conducted by an authority in a State, which shall be approved by the Pharmacy Council of India under sub-sec. (1) of S. 12 only if it provides adequate arrangements for teaching in regard to building, accommodation, equipment and teaching staff as specified in Appendix B to these regulations. It is not disputed that this approval has been granted by the Pharmacy Council of India under sub-sec. (1) of S. 12 thereof. It may be made clear that under S. 12(1), approval will be granted only if the Central Council is satisfied after such enquiry as it thinks fit that the course of study is in conformity with the Regulations. For the said purpose from time to time, the Central Council made this enquiry from the Board that the necessary approval under sub-sec. (1) of S. 12 was granted. In case the Board feels that the petitioner-Institution is not functioning in conformity of their Affiliation Rules or do not confirm the provisions of the Education Regulations, it was open to the Board to report the matter to the Pharmacy Council of India to withdraw its approval for the subsequent year. As long as the petitioner has been accorded approval under sub-sec. (1) of S. 12, his students will be entitled to be examined by the Board, having been approved by the Pharmacy Council of India under sub-sec. (2) of S. 12. The Board could not be allowed to control the admission of the students by the petitioner Institution under the garb of Affiliation Rules. Virtually the said Affiliation Rules do not relate to the petitioner-Institution which conducts the course of study of Pharmacists. Under the Affiliation Rules, the Institution has been defined as a "Technical Institution which conducts a diploma/certificates course in any branch of engineering or technology duly approved by the Board". It is, therefore, evident that it does not include the petitioner-Institution which

conducts Pharmacy course. It appears that the said Affiliation Rules were made by the Board with respect to technical Institutions only because the Board also conducts examinations not only for Pharmacists as approved under sub-sec. (2) of S. 12 but otherwise also.

16. As regards the Central Act No. 52 of 1987 i.e. the All India Council for Technical Education Act, 1987 which came into force on 28th March, 1988, it has no applicability to the petitioner-Institution. Under sub-sec. (1) clause (k) of S. 10 thereof, duties of the Council have been given. One of them being to grant approval for starting new technical institutions and for introduction of new courses of programmes in consultation with the agencies concerned. Thus, such Act applies to new Technical Institutions, and not to the Institutions which have already been approved, under the Pharmacy Act. Moreover, the earlier Act has not been repealed by this Act No. 52 of 1987. Both are operating separately and, therefore, the Board could not draw any assistance from the said Act 52 of 1987 to control admission of the petitioner-Institution when admittedly no grant-in-aid whatsoever of any kind is being given to it by the respondents.

17. Apart from that, S. 46 of the Pharmacy Act provides that the State Government may by notification in the official gazette make rules to carry out the purposes of Chapters III, IV and V. As regards to S. 12 of the Act, which deals with the approval of course of study and examination falls under Chapter II thereof. That being so, the State Government was not authorised to make any rules with respect to the courses of study and examinations as contemplated under S. 12 being in Chapter II of the Act.

18. The authorities relied upon by the counsel for the State that when there are no rules, the State Govt. can form rules under executive powers under Art. 162 is not disputed. But in the present case, it could not successfully argued on behalf of the respondents that as regards admission in the Institution which has been approved under sub-sec. (1) of S. 12 of the Pharmacy Act, they are not entitled to make admissions according to their own prospectus. It may be that if State aid etc. was given to the Institution, it could control its admission but in the absence of any such aid of any kind, the admissions to the Institution could not be controlled by the respondent-Board.

19. Under these circumstances, the direction in Annexure P2 that the admission to all non-Engineering Courses including Pharmacy conducted by the petitioner-Institution i.e. the Maharishi College of Pharmacy Tra-pori will be made at Government Polytechnic for Women, Ambala City, and similar other directions that "no Institute is authorised to issue its own prospectus and make admission for Engineering, Non-Engineering and Pharmacy Courses at its own level. Any student seeking admission direct in any Institute/Polytechnic would be doing so at his own risk and responsibility and the examinations of such student would not be conducted by State Board of Technical Education, Har-yana. Any Institute violating the aforesaid admission process shall be liable for disaffiliation" is not warranted. Similarly, in Annexure P3 the direction that "it was made clear that

in case admission is made by any Institute at its own level in violation of instructions of this office, no cognizance of such admission will be taken and students so admitted shall not be registered and not allowed to appear in the examination conducted by the Board," is also not tenable as regards the petitioner Institution. Consequently, the writ petition along with the CWP 12033 of 1989 are allowed to the extent indicated above. Such directions given in Annexure P2 and P3 will not be made applicable against the petitioners.

20. Writ Petitions Nos. 11768, 11525, 11566 and 11769 of 1989 have been filed by the students who have not been given admission by the private Institutions which have been given admission by the private Institutions which have been duly approved under sub-sec. (1) of S. 12 of the Pharmacy Act. According to the Board, since the students have given their first preference with a particular Institution, therefore, they were directed to be admitted by the said Institutions. However, since the said Institutions could not be directed by the Board to admit students since they were not getting any State aid, the petitioners in all these petitions will be entitled to be considered on merit for the purpose of their admissions in the State-owned Institutions. It may be made clear that the petitioners who come on merit will not be deprived of admissions only because they gave their preference for those Institutions which are not allowing them to join now. In that situation, if they come on merit the Board will consider the same and give them admissions accordingly in other Institutions. Consequently, all these petitions succeed to the extent indicated above with no order as to costs.

21. In C.W.P. No. 9981 of 1989, the students of the petitioner-Institution made an application under O.1, R. 10 of the Civil P. C. for being impleaded as party to the present writ petition. Such students are neither necessary nor proper parties. Hence, this said Civil Misc. application is dismissed.

22. Order accordingly.