

(2018) 09 RAJ CK 0079

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1031, 1030 of 2018, Civil Writ Petition No. 17292, 17293 of 2018

Dhattarwal Education Society @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 05-09-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 09 RAJ CK 0079

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Vijay Poonia, S.K. Gupta,

Final Decision : Dismissed

Judgement

Mohammad Rafiq

This special appeal seeks to challenge order dated 10.08.2018 passed by learned Single Judge of this Court, whereby prayer of the appellant-writ

petitioner for issuing direction to Respondent No. 3, the Convener, Pharmacy Counseling Board to include its name in the counseling for admission of

the students to the course of Diploma in Pharmacy for Academic Session 2018-19, has been declined and S. B. Civil Misc. Stay Application No.

13854/2018 filed by the appellant in S. B. Civil Writ Petition No. 17292/2018 has been dismissed.Â

Mr. Vijay Poonia, learned counsel appearing on behalf of the appellant submitted that the appellant, Dhattarwal Education Society moved an

application before respondent-State Government for grant of No Objection Certificate (for short â??NOCâ??) for starting new course of Diploma in

Pharmacy.Â The appellant also moved an application before All India Council for Technical Education (for short â??AICTEâ??) seeking approval

to start Diploma Course in Pharmacy from Academic Session 2018-19.Â The State Government issued Letter of Intent to the appellant-society on

30.01.2018, but Rajasthan University of Health Sciences rejected application of the appellant for grant of affiliation for admission on 20.02.2018 on the

premise that NOC of the State Government has not been submitted along with the application. However, AICTE subsequently issued letter of

approval to the appellant-society on 30.04.2018.Â Pharmacy Council of India, by virtue of its decision taken in the meeting of its Executive

Committee, also granted approval for Diploma Course in Pharmacy to the institute of the appellant-society on 09.02.2018 with intake of 60 students

for Academic Session 2018-19.Â However, despite repeated reminders, the State Government did not issue NOC, even though the last date for grant

or refusal of NOC by the State Government/the University has been fixed as 15th May in the calendar, as per judgment rendered by the Supreme

Court in Parshvanath Charitable Trust & Others Vs. All India Council for Technical Education & Others, (2013) 3 SCC 385. It is therefore argued

that the learned Single Judge erred in law by not directing inclusion of name of institute of the appellant-society for allotment of students by the

Convenor, Pharmacy Council Board.Â

Learned counsel further submitted that even though in the aforesaid calendar, 1st August has been fixed for commencement of session, but in the

same calendar, 15th Â August has been fixed as the date up to which students can be admitted against the vacancies arising due to any reason.Â The

time schedule laid down by the Supreme Court in Parshvanath Â Charitable Trust & Others (supra) will be binding upon AICTE, Pharmacy Council

of India or the State Government, but this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, is not bound by the

aforesaid time schedule. Learned counsel, in support of this argument, relied upon the judgment of the Kerala High Court in Irinjalakuda Diocesan

Educational Trust Kodakara, Thrissur Vs. All India Council for Technical Education & Others, (Writ Petition (c) No. 13969/2015 (U) decided on

11.06.2015), especially the observations made in para no. 15 and 16 of the Report, in which the Kerala High Court held that aforesaid direction does

not take within its ambit the Constitutional Courts namely the High Courts, which exercise jurisdiction under Article 226 of the Constitution of India.Â

Learned counsel relied upon the judgment of Delhi High Court in Jamia Hamdard (Deemed University) Vs. Union of India & Another (Writ Petition

(c) No. 5941/2015 decided on 20.08.2015) and order dated 17.08.2018 passed by the Supreme Court in Yogendra Nath Saxena College of Pharmacy

and Research Centre Vs. Dr. A.P. Abdul Kalam Technical University & Others, (Writ Petition (Civil) No. 938 of 2018) to argue that so far as this

Court is concerned, there is no impediment for passing interim order, directing inclusion of name of institute of the appellant-society in the seat matrix

of the Pharmacy Council of India for allotment of students for Academic Session 2018-19.Â It is also argued that in view of the law laid down by the

Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Others, (2006) 9 SCC 1 and Jaya Gokul

Educational Trust Vs. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala, (2000) 5 SCC 231, the

State Government has no role to play in the matter and it is the AICTE, which is ultimate authority to decided for approval of the intake.Â Since

AICTE granted approval to the appellantinstitute on 30.04.2018 and Pharmacy Council of India granted approval on 09.02.2018, the State Government

was not justified in withholding NOC, particularly when it had issued Letter of Intent in favor of the appellant on 30.01.2018.Â

Mr. S.K. Gupta, learned Additional Advocate General appearing on behalf of the respondents-State and Mr. Dinesh Yadav, learned counsel appearing

on behalf of the Rajasthan University of Health Sciences opposed the special appeal and submitted that the appellant-institute in the present case was

granted approval by AICTE on 30.04.2018 and Pharmacy Council of India on 09.02.2018 and taking note of the delay aforesaid, the State

Government has issued NOC in favour of the appellantinstitute vide order dated 08.08.2018 for Academic Session 201920 and not for Academic

Session 2018-19.Â Learned Additional Advocate General, in this connection, referred to observations made by the Supreme Court in Parshvanath

Charitable Trust & Others (supra), especially to para 41, according to which first round of counseling/admission for allotment of seats has to be

completed on or before 30th June; second round of counseling/admission has to be completed on or before 10th July and last round of counseling has

to be completed on or before 20th July; last date for admitting candidates in seats other than allotted above shall be 30th July.Â Academic session has

to commence from 1st August; last date up to which students can be admitted against vacancies arising due to any reason has been indicated to be

15th August with clear stipulation that no student should be admitted in any institution after the last date under any quota.Â In that very time schedule,

last date for granting or refusing approval by AICTE has been indicated to be 10th April and last date for granting or refusing approval by

University/State Government has been fixed as 15th May.Â This has been further reiterated by the Supreme Court in Para 42 of the Report by

specifically observing that all the seats should be filled positively by 15th August, after which there shall be no admission, whatever be the reason or

ground.Â Since both the aforesaid dates had gone by, the State Government was fully justified in granting NOC to the appellant-institute for

Academic Session 2019-20.

Upon hearing learned counsel for the parties and perusing the impugned order passed by the learned Single Judge, we find that approval in favour of

the appellant-institute was granted by AICTE on 30.04.2018 and by Pharmacy Council of India on 09.02.2018. It is true that Letter of Intent was

issued by the State Government to the appellant earlier on 30.01.2018, but owing to the delay aforesaid, the State Government has issued NOC on

08.08.2018 for Academic Session 2019-20 only.Â Learned Single Judge therefore cannot be said to be unjustified in not directing inclusion of name of

the appellant-institute for allotment of the students by passing interim order particularly when it has been noted that writ petition was filed only on

04.08.2018, i.e. after delay of six months, after grant of approval by Pharmacy Council of India on 09.02.2018.Â We are not inclined to concur with

the view taken by Kerala High Court in Irinjalakuda Diocesan Educational Trust Kodakara, Thrissur (supra), that the time schedule laid down by the

Supreme Court in Parshvanath Charitable Trust & Others (supra),Â would not be binding upon this Court, as by laying down the aforesaid time

schedule, the Supreme Court requires adherence to the academic discipline with specific emphasis that all the seats should be filled positively by 15th

August, after which there shall be no admission, whatever be the reason or ground.

In view of above, we are not inclined to interfere with the order passed by the learned Single Judge.Â There is no merit in this special appeal, which

is hereby dismissed.

Stay Application No. 14858/2018 also stands dismissed.