
(2006) 02 KAR CK 0077
In the Karnataka High Court
Case No : Writ Petition No. 3034 of 2006

Gautham College of Pharmacy	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Citation : (2006) 02 KAR CK 0077

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : V. Vishwanath, for the Appellant; B. Manohar, A.G.A. for Respondents 1, 2 and 4 and S.S. Haveri, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner in this petition is an institution imparting education in Diploma in Pharmacy, The petitioner, assailing the correctness of the endorsement dated 17th February, 2006, vide Annexure-G, has presented the instant writ petition. Further, petitioner-institution has sought for a direction, directing the fourth respondent to announce the results of first year examination of Diploma in Pharmacy of the 8 students listed above forthwith and also direct the fourth respondent to immediately issue the admission tickets to the eight students listed at page 7 of writ petition, to enable them to appear for the ensuing supplementary examination scheduled to commence from 27th February, 2006.

2. The only grievance of the petitioner-institution in the instant writ petition is that, the fourth respondent herein has not announced the results of students mentioned at Sl. Nos. 41 to 53 as per the admission list submitted to the Competent Authority claiming that they are studying in the petitioner-institution, on the ground that, in view of the undertaking given by the petitioner-institution on 5th October, 2005, the fourth respondent has permitted these eight students mentioned in prayer (b) to appear for the examination conducted in the month of October 2005. It is the specific case of petitioner-institution that, inspite of the

permission accorded for increase of intake from 40 to 60 in respect of first year Diploma in Pharmacy course and giving several representations to fourth respondent to announce the results of the students in question, the said request has neither been considered nor disposed of as on date. Further, it is their case that, a communication has been issued on 17th February, 2006, vide Annexure-G stating that, the request made by petitioner-institution for enhancing the intake from 40 to 60 is pending consideration before the Competent Authority of the State Government and as soon as the same is received from the Government, the request of the petition-institution will be considered and the admission of students mentioned at Sl. Nos. 41 to 53 i.e., 8 students mentioned in prayer (b) will be approved and their results will be announced. Being aggrieved by the same, assailing the correctness of the said communication issued by the Secretary of the fourth respondent to the Principal of the petitioner-institution vide Annexure-G and seeking appropriate directions, as stated above, petitioner-institution has presented the instant writ petition.

3. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate for considerable length of time. After hearing learned Counsel appearing for petitioner, learned Additional Government Advocate appearing for respondents 1, 2 and 4, Sri S.S. Haveri, learned Counsel appearing for third respondent and after careful perusal of the material available on record, it reveals that, the third respondent-Pharmacy Council of India, has issued a communication dated 25th June, 2004, vide Annexure-C, addressed to the Principal of the petitioner-institution, stating that, they have taken a decision to recommend to the Central Council to enhance the intake of students from 40 to 60 from 2004-05 academic session and the said decision will be placed before the Central Council for ratification. The petitioner-institution, only on the basis of the said proposal/recommendation made by the third respondent vide Annexure-C, has taken the risk in admitting these students beyond the permitted intake capacity by putting the future of these students into jeopardy. The petitioner-institution, further, has even gone to the extent of giving an undertaking before the fourth respondent on 5th October, 2005 that, if for any reason, they cannot get the permission for enhancement of intake from 40 to 60 for the said academic year from the Government, they would not announce the results and for the time being, the students at Sl. Nos. 41 to 53 may be permitted to appear for the Diploma in Pharmacy examination, commencing from 6th October, 2005 and in the event of failure to get the approval of enhancement of intake from 40 to 60 students, the results of these students may be withheld. The said affidavit which is duly sworn to before the notary on 5th October, 2005 has been filed before the fourth respondent and the same is produced before the Court. It is not in dispute that, as on date, the Government has not accorded permission for enhancement of intake from 40 to 60 nor has the Government issued any order whatsoever by increasing the intake from 40 to 60, in respect of the petitioner-institution for Diploma in Pharmacy course for the academic year 2004-05. The representations given by petitioner-institution have been rightly considered and

appropriate communication has been issued vide Annexure-G stating that, the matter is pending consideration for enhancement of intake from 40 to 60 and as soon as the same is received, the request of the petitioner-institution will be considered for approval of admission of students at Sl. Nos. 41 to 53 and their results will be announced. I do not find any error as such in the impugned communication issued by fourth respondent vide Annexure-G, It is significant to note here itself that, admittedly, as on date, the Government has not passed any order, according permission to petitioner-institution for enhancement of intake from 40 to 60 in respect of Diploma in Pharmacy course, When such being the case, the petitioner-institution has not only taken risk for itself but also has put the students at Sl. Nos. 41 to 53 into jeopardy by admitting them and by misleading them, contrary to the relevant provisions of the Diploma in Pharmacy course and the existing regulations. Therefore, the modus operandi in moving the matter at 1.30 p.m. just when the Court is raising, stating that, there is urgency and requesting to take up the matter at the end of the list and persuading the Court that, they would convince the Court by producing authenticated documents to substantiate their case for granting the relief, cannot be appreciated. In the instant case, the petitioner-institution has even gone to the extent of assailing the correctness of the impugned communication by going contrary to their own undertaking given before the authorities by way of an affidavit. When there is no permission accorded by the Competent Authority, permitting them to admit the student in excess of the admitted intake or enhancing the intake from 40 to 60, the petitioner-institution was not right in admitting these students i.e., students at Sl. Nos. 41 to 53 by keeping their future in darkness. The said action of petitioner-institution in admitting these students is impermissible as per the mandatory provisions of the Pharmacy Act, 1948 and existing regulations, as referred above. Therefore, I am of the considered view that, by no stretch of imagination, the relief sought for petitioner-institution can be granted. Hence, the writ petition filed by petitioner is liable to be dismissed as misconceived one. Accordingly, it is dismissed.

4. Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents 1, 2 and 4 and Sri S.S. Haveri, learned Counsel appearing for second respondent is permitted to file vakalath, within two weeks from today.