
(2012) 07 GUJ CK 0001
In the Gujarat High Court

Case No : Letters Patent Appeal No. 3019 of 2012 (in Spl. C.A. No. 5728 of 2010) with L.P.A. No. 3020 of 2010 (in Spl. C.A. No. 5729 of 2010) to L.P.A. No. 3023 of 2010 (in Spl. C.A. No. 5732 of 2010) with L.P.A. No. 3014 of 2010 (in Spl. C.A. No. 5728 of 2010) to

Gujarat State Pharmacy Council	Vs	APPELLANT
Hafeez Rizwan Mahamood and Others		RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Pharmacy Act, 1948 — Section 12, 17(1)

Citation : (2012) 3 GLR 2586 : (2013) 2 SCT 414

Hon'ble Judges : Paresh Upadhyay, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Tushar Mehta with Omkar C. Dave, for the Appellant; Gaurav Chudasama, for Respondent No. 1, Ms. Megha Chitaliy, A.G.P., for Respondent No. 2, Notice Served by D.S. for Respondent Nos. 3, 6 to 7, Dhaval G. Nanavati, for Respondent No. 4, Mrs. V.D. Nanavati and Ms. Mamta R. Vyas, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—All these appeals are directed against the common order passed by the learned Single Judge of this Court in Special Civil Application Nos. 5728 to 5732 of 2010, (reported in 2010 (5) GLR 3952) by which, the learned Single Judge allowed the writ petitions filed by the petitioners-students. The challenge before the learned Single Judge was against the decision taken by the Gujarat State Pharmacy Council, who is respondent No. 7 in the Special Civil Application, by which, the respondent No. 7 refused to give registration to the concerned petitioners as pharmacist on the ground that the said petitioners have undertaken study in an unrecognised institution, and therefore, they are not entitled to get the registration. The original respondent No. 7 is appellant in L.P.A. Nos. 3019 to 3023 of 2010.

2. The learned Single Judge by the impugned order dated 28-9-2010 came to the

conclusion that if Sec. 12 of the Act is properly considered and understood, then, authority within meaning of Sec. 12 must be Gujarat University and not College because course has been conducted by Gujarat University, Examinations are also conducted by Gujarat University. Learned Single Judge also found that if these guidelines are considered in its proper perspective, then guideline (d) give power to University/Examining Authority to approve transfer/migration under intimation to Pharmacy Council of India and if these guidelines are construed properly, grant of N.O.C. for transfer of petitioners-students from respondent No. 5-College to respondent No. 6 itself suggests that respondent No. 5-College was considered to be approved college or recognised college by Pharmacy Council of India because, otherwise, Gujarat University cannot be permitted the transfer of students means petitioners from respondent No. 5-College to respondent No. 6-College. The learned Single Judge by detailed judgment, accordingly allowed the writ petitions against which the present Letters Patent Appeals have been filed by the Gujarat State Pharmacy Council and Pharmacy Council of India, respectively.

3. Learned Additional Advocate General Mr. Tushar Mehta appears for the said appellant i.e. Gujarat State Pharmacy Council. The other five Letters Patent Appeals have been filed by the Pharmacy Council of India, on the ground that the directions given by the learned Single Judge asking the State Pharmacy Council to give registration to such students as pharmacist is de hors the Act and no directions could have been given and the students who have passed the course from an unrecognised institution are not entitled to get any registration. On behalf of the appellant, learned Additional Advocate General Mr. Mehta has vehemently argued that even though the appellant was original respondent No. 7 in the petition, no service of Rule was issued to the said respondent No. 7 and the Special Civil Applications have been decided ex-parte without giving any notice to the respondent No. 7. On merits, it is also argued by Mr. Tushar Mehta that the students have undertaken their study in an unrecognised institution, and therefore, they are not entitled to get any benefit and no registration is required to be conferred to a student who has passed the course from an unrecognised institution. In order to substantiate his say, he has relied upon the provisions of the Pharmacy Act, 1948. It is submitted by Mr. Mehta that today there are so many unrecognised institutions operating in the State of Gujarat and imparting education without any registration only for the sake of making money by enrolling the students, and if such students are allowed to undergo the course and ultimately claims equity, the Court should not be liberal in granting relief in such cases. Learned Additional Advocate General Mr. Mehta has also relied upon the decision of the Hon''ble Supreme Court in the case of Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, , wherein, in Para 87, the Hon''ble Supreme Court has observed as under:

(ix) Once the recognition is withdrawn under Sec. 17(1), the institution concerned is required to discontinue the course or training in teacher education and the examining body is obliged to cancel the affiliation. The effect of withdrawal of the recognition is that the qualification in teacher education

obtained pursuant to the course or training undertaken at such institution is not to be treated as valid qualification for the purpose of employment under the Central Government, any State Government or University or in any educational body aided by the Central or the State Government.

(xviii) In future, the High Courts shall not entertain prayer for interim relief by unrecognised institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such institutions for permission to appear in the examination or for declaration of the result of examination. This would also apply to the recognised institutions if they admit students otherwise than in accordance with the procedure contained in Appendix-1 of the Regulations.

4. It is argued by Mr. Tushar Mehta as well as Mr. Dhaval G. Nanavati appearing for the respective appellants that the directions given by the learned Single Judge is not in accordance with law and no unrecognised institution should be allowed to enroll the students, and even if the students are prosecuting their study in such institutions, the said students may not be given any relief by the Court. It is submitted on behalf of the Pharmacy Council of India that the Pharmacy Council of India has issued directions to all concerned including the Centralised Admission Committee about the guidelines and information about the approved institutions under Sec. 12 of the Act and also issued a Press note that the students who desire to take the admissions in the pharmacy colleges has to verify whether the institution is having proper approval by the Pharmacy Council of India under Sec. 12 of the Act or not.

5. Learned Counsel appearing for the respondents-students, in turn, argued that it is true that initially when the students were admitted, the institution was not recognised, but the students were enrolled through Centralised Admission Committee. The said committee is enrolling the students for professional courses. It is submitted that out of five students, four students were enrolled in the institution through the Centralised Admission Committee, and therefore, there was no necessity for the students to verify whether the institution is recognised or not. It is submitted that the fifth student was admitted in the management quota. It is submitted that after completing one year, for the second year, they were transferred to a recognised institution, and at the time, when they passed their course, they were studying in the recognised institution, which is not in dispute.

6. We have heard the learned Counsel appearing for the parties. It is required to be noted that when a notice is issued by the Court asking the respondents to show cause as to why the matter should not be admitted, and if, the respondent/respondents, as the case may be, fails to appear in the matter in response to such notice, and if the Rule is issued, then such Rule is also required to be served again on such respondent. In a given case, if the notice specifically states that on the returnable date of the notice, the Court will decide the matter finally, in such eventuality, it would not be necessary to serve the Rule again qua the

party who is not present in response to the notice. In the instant case, notice was issued to the respondents to show cause as to why the petition should not be admitted. If the Court wanted to decide the matter finally, the notice of Rule was again required to be served on respondent No. 7. In the present case, the matter was decided by the learned Single Judge without serving the Rule on respondent No. 7 and in view of the same, the order passed by the learned Single Judge against respondent No. 7 is required to be set aside. It is required to be noted that the respondent No. 7 is not a formal party, in fact, the main prayer in the writ petition was against the respondent No. 7. The respondent No. 8 is a different identity altogether. The learned Advocate for respondent No. 8 was not appearing for respondent No. 7 and had not accepted the notice on behalf of the respondent No. 7 at the stage of admission. In view of the same, the order passed against respondent No. 7 is required to be set aside.

7. On merits, it is required to be noted that considering the scheme of the Act, unless the institution is recognised, no student is allowed to be permitted to prosecute the study in such unrecognised institution, and even University is not required to take the examination of such students who have undergone the study in a unrecognised institution. It is required to be noted that unfortunately the Centralised Admission Committee has without verifying the fact enrolled four students to the college which was not recognised college at the relevant time. In our view, learned Single Judge, therefore, was not right in holding that simply because they were transferred to a recognised institution later on even earlier institution can be said to be a recognised where they were originally enrolled. Even the learned Counsel for the original petitioners also have not argued on that line before us. This being an important course of pharmacist where after getting the registration, the qualified pharmacist will require to deal with the medical aspect, if person passes the course of pharmacist through the unregistered institution it may have adverse effect on public health. Even in larger public interest, no registration can be given by the Council to a student who has not passed the course through the recognised institution. At this stage, reference is required to be made to Sec. 12 of the Pharmacy Act, 1948, which reads as under:

12. Approved courses of study and examinations:-(1). Any authority in a (State) which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a (State) which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for

registration as a pharmacist under this Act.

(3) Every authority in the (State) which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination.

8. Considering the said provisions, it is clear that the State authority which conducts the course of study for pharmacist is required to apply for approval of the course to the Pharmacy Council of India and Pharmacy Council of India is required to declare the said course of study to be an approved course of study for the purpose of admission to a particular examination for pharmacist. The Pharmacy Council of India, is therefore, a supreme body and it is informed to the Court that the Centralised Admission Committee which is constituted by the State Government is given advance copy of the list of the approved colleges. Considering the scheme of the Act, therefore, we are not in a position to agree with the reasonings of the learned Single Judge that when the N.O.C. for transfer is granted for respondent No. 5-College to respondent No. 6-College itself suggests that respondent No. 5-College was considered to be approved college or recognised college by Pharmacy Council of India, because otherwise, Gujarat University cannot be permitted to transfer the students from one college to another. With respect, we are unable to agree with the said reasonings. It is nobody's case before us even by the learned Advocate for the students that respondent No. 5-Institution was a recognised institution, in fact, it is an admitted fact that respondent No. 5-Institution was not recognised institution, and as per the scheme of the Act and procedure, the list of approved colleges are to be made available well in advance to the Centralised Admission Committee. Considering the same, the order of the learned Single Judge on the aforesaid point, in our view, is not sustainable, and on that ground alone, the appeals are required to be allowed.

9. However, during the course of hearing, it is pointed out to the Court that so far as present group of five students are concerned, four students were admitted through the Centralised Admission Committee which is an independent body and it is not a case that there was a back-door entry for admission. It is unfortunate that the Centralised Admission Committee assigned the students to a particular institution without verification whether it is recognised or not. It can be said that there is serious lapse on the part of the Centralised Admission Committee and we hope that in future the State Government and the committee appointed by the State will take care while giving admissions to the students. It seems that the said Centralised Admission Committee without applying its mind assigned the students to the unrecognised institution and mechanically passed such order, which has put the fate of the students in the jeopardy and it is for the appropriate authority to consider the aspect as to why the Centralised Admission

Committee has acted in such a manner. The Court, therefore, suggested to Mr. Tushar Mehta learned Additional Advocate General that considering the said aspect and considering the fact that in subsequent year, the students were transferred to the institution which was recognised and from where they passed the course and in view of this peculiar fact-situation of this case, whether the State Pharmacy Council now may reconsider their stand in view of the aforesaid facts emerges in the matter. Learned Counsel Mr. Mehta placed on record the copy of the affidavit filed by the Additional Registrar, Gujarat State Pharmacy Council. In Para 3 of the said reply, it is averred that so far as peculiar fact-situation which arises in case of the present students are concerned, the Gujarat State Pharmacy Council can make an exception and without making it a precedent subject to the approval of Pharmacy Council of India.

10. In view of the peculiar fact situation of the present case, while allowing the appeals, we direct that the order of the learned Single Judge so far as directing the State Pharmacy Council to give registration to the concerned students, is not required to be disturbed and the Gujarat State Pharmacy Council may accordingly grant registration to the concerned five students who have passed the aforesaid course from the recognised institution, which fact is not in dispute. In view of what is stated above, these appeals are allowed by setting aside the order of the learned Single Judge. However, it is directed that the Gujarat State Pharmacy Council now shall give registration to the aforesaid five students at the earliest and communicate the said decision to the Pharmacy Council of India immediately and the Pharmacy Council of India may also accordingly take appropriate decision in this behalf in connection with granting registration to the aforesaid students at the earliest, and in any case, in their next Central Council's meeting. It is clarified that the aforesaid direction is given in view of the peculiar facts of this case, i.e., the students were subsequently transferred to the recognised institution from which they have passed their course, and at the time of completing the course, they were already undergoing their course in a recognised institution. It is also clarified that this order is passed in view of the consent given by the Gujarat State Pharmacy Council in view of the peculiar facts of this case, and therefore, the aforesaid directions, ipso facto may not be treated as precedent in other cases. All the appeals are allowed accordingly. No order as to costs.