

(2010) 09 GUJ CK 0072
In the Gujarat High Court

Case No : Special Civil Application No. 5728 to 5732 of 2010

Hafeez Rizwan Mahamood

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Pharmacy Act, 1948 — Section 1, 10, 12, 12, 12(1)

Citation : (2010) 09 GUJ CK 0072

Hon'ble Judges : H.K.Rathod, J

Bench : Single Bench

Advocate : Gaurav Chudasama, for the Appellant; Jirga Jhaveri, AGP for Respondent 1, Dhaval G. Nanavati, for Respondent 3, V.D. Nanavati, for Respondent 4 and Mamta R. Vyas, for Respondent 5, for the Respondent

Judgement

H.K.Rathod, J.—Heard learned Advocate Mr. Gaurav Chudasama for petitioners, learned AGP Ms. Jirga Jhaveri for respondent No. 1 and respondent No. 8, learned Advocate Mr. Dhaval G. Nanavati for respondent No. 3, Mrs. V.D. Nanavati for respondent No. 4, learned Advocate Ms. Mamta R. Vyas for respondent No. 5. Though notice issued by this Court has been served on respondent No. 6 and Respondent No. 7, no appearance is filed on behalf of respondent No. 6 and Respondent No. 7.

2. Considering submissions made by learned advocates for respective parties, Rule. Service of notice of rule is waived by learned AGP Ms. Jirga Jhaveri on behalf of respondent Nos. 1 and 8. Service of notice of rule is waived by learned Advocate Mr. Dhaval G. Nanavati on behalf of respondent No. 3. Service of notice of rule is waived by learned Advocate Mrs. V.D. Nanavati on behalf of respondent No. 4. Service of notice of rule is waived by learned Advocate Ms. Mamta R. Vyas on behalf of respondent No. 5. With consent of learned advocates appearing for respective parties, matters are taken up for final hearing today.

3. Brief facts of present petitions are to the effect that in March, 2005, petitioners cleared Higher Secondary Certificate Examination. Thereafter, in

2005-06, petitioners took admission through respondent No. 2 Chairman, Centralized Admission Committee, LD Engineering College, Gujarat University Road, Navrangpura, Ahmedabad in Respondent No. 5 College which was approved by respondent No. 4. Petitioners studied course approved by respondent No. 3 and passed examinations held by respondent No. 4 and cleared first year from respondent No. 5 College in April, 2006. Thereafter, respondent No. 5 College was closed due to some circumstances and therefore, respondent No. 5 College transferred its students to respondent No. 6 College in term of academic year 2006-07. Petitioners had studied course approved by respondent No. 3 and passed examinations held by respondent No. 4 and cleared second year from respondent No. 6 College in April, 2007. Thereafter, petitioners have also completed training programme as per Pharmacy Act. In 2006, respondent No. 6 college was granted approval by respondent No. 3 and therefore, petitioners have approached respondent No. 7 by way of filing Registration Application of Pharmacist. On 29.8.2009, said application came to be rejected by respondent No. 7 only on the ground that the first college that is respondent No. 5 herein from which petitioners cleared their first year was not approved by respondent No. 3 and therefore, petitioners are not eligible for registration. Therefore, representation was made to respondent No. 3 and asked that after petitioners completed two years of Diploma in Pharmacy Course successfully, even though, petitioners are not getting certificate, so what should petitioners do with such problem. Such representation was made by petitioners on 17th August, 2009. Reply was given by Pharmacy Council of India page 25 annexure G dated 17th December, 2009 which is quoted as under:

(a) Divya Drusti Charitable Trust, Diploma Pharmacy College, at Bedia, Ta. Kalol, Gujarat where Mr. Hafeez Rizwan Mahemood took admission in 2005-2006 is not approved by PCI.

(b) D. Pharm course at JM Pandya (Savliwala) Diploma Pharmacy College, Pipaliya Ta. Waghodia, Distt. Vadodara Gujarat approved by PCI u/s 12 of Pharmacy Act, 1948 for the purpose of registration as a pharmacy as per following details-

- For 2005-2006 and 2006-2007 academic session for 45 admissions.
- From 2007-2008 to 2010-2011 academic session for 60 admissions.

(c) As PCI is not aware of any transfer by institution and Examining Authority.

4. Thus, as per aforesaid reply given by Pharmacy Council of India Annexure G page 25, respondent No. 5 College is not approved by Pharmacy Council of India and respondent No. 6 College was approved by Pharmacy Council of India u/s 12 of Pharmacy Act, 1948 for the purpose of registration as Pharmacist for 2005-2006 academic session for 45 admissions and for 60 admissions for academic session from 2007-2008 to 2010-2011 and as Pharmacy Council is not aware of any transfer by institution and examination authority and, therefore, petitioners have filed these petitions before this Court challenging said order

dated 29.8.2009.

5. According to petitioners, as admission was granted to petitioners through Centralized Admission Committee, respondent No. 2 and said committee is functioning with Gujarat University, therefore, respondents No. 1,2 and 4 are duty bound at the time of granting admission to students to see that admission is granted to students in a college which is having recognition and also requisite permission as well as affiliation of all the concerned authorities. According to petitioners, they are quite innocent students not having any information whether respondent No. 5 College is approved by Pharmacy Council of India or not. Nobody has informed or told to petitioners in respect to such thing while giving admission by Centralized Admission Committee in respondent No. 5 College. At the time of giving admission, it was also not made clear that such admission is subject to such recognition/affiliation from Pharmacy Council of India. According to petitioners, admission were given to them through Centralized Admission Committee on the basis of merit after due scrutiny by respondent No. 2 Committee and thereafter, admissions were obtained by petitioners in respondent No. 5 trust running pharmacy college as duly recognized and having due affiliation of concerned authorities for educational facilities provided by it and finally conferring a duly recognized valid and lawful degree by respondent No. 4 Gujarat University, which at the end of the day, shall be the basis for future of students so enrolled. According to petitioners, after all, processes have been duly completed that is admissions given by following proper norms by Centralized Admission Committee, yearly examinations conducted as per norms and rules by Gujarat University that is respondent No. 4 and issuance of mark sheets every year to petitioners, it is now bounden duty on the part of respondents to see to it and take care that after successful completion of the course, the petitioners should not be regarded as students having passed only 12th Standard. According to petitioners, respondent No. 4 university and respondent No. 5 trust are having legal obligation to keep petitioners informed about any inadequate facilities, lacuna and any act which may result into cancellation of affiliation/recognition etc., endangering future of petitioners without there being any fault on the part of petitioners. According to petitioners, any non disclosure of vital, relevant and/or material fact and information amounts to unfair, unreasonable and high handed approach of respondent No. 1,2,4 and 5 and violative of Article 14 of Constitution of India. According to petitioners, after completion of entire formality and successful completion of two years study and also completion of practical training programme as per rules and regulations of Pharmacy Act, if students will not get registration as Pharmacist, then, nothing would remain for such students. It is just like that students have wasted their money, time, energy and efficiency for no fault on their part. According to petitioners, they were admitted in respondent No. 5 college and have passed their relevant annual examination for the whole course of diploma in pharmacy of two years and also after completion of practical training programme, now objection is being raised by Pharmacy Council of India that the petitioners are not entitled for registration

as pharmacist because respondent No. 5 college is not approved by pharmacy council of India. Then, it amounts to gross injustice caused to petitioners and other students in diploma course of pharmacy become useless and they remained without having diploma in pharmacy because of this technical aspect which has been raised by respondent No. 3 Pharmacy Council of India. Petitioners have also pointed out their difficulty because of non registration as Pharmacist, they are not able to get Government job, they are also not able to get job in private firms and they are also not able to do any business as Pharmacist.

6. Learned Advocate Mr. Gaurav Chudasama appearing for petitioners placed reliance upon decision of this Court in identical situation which has been decided by this Court on 29.11.2003 in Special Civil Application No. 14795 of 2003 with Special Civil Application No. 15202 of 2003 with Special Civil Application No. 15221 of 2003 in case of Chintan Narharibhai Shah v. State of Gujarat and submitted that petitioners are challenging orders passed by respondent No. 7 Gujarat State Pharmacy Council page 23 Annexure E dated 29th August, 2009. Said answer is given by Additional Registrar of Gujarat State Pharmacy Council, Ahmedabad where specific stand has been taken by Gujarat State Pharmacy Council that the Gujarat State Pharmacy Council is functioning as per Rules of Pharmacy Council of India and Pharmacy Act, 1948 and accordingly right from admission taken by student in first year till last year of college means till passing of examination, if college is having recognition from Pharmacy Council of India, then alone, registration can be granted. Then, it is stated in no uncertain terms that in case of petitioners, first year has been completed by petitioners in Divya Drashti Charitable Trust Diploma Pharmacy College, Bedia College which is not having recognition from Pharmacy Council of India and, therefore, even though JM Pandya Diploma Pharmacy College, Pipalia Pharmacy College is having PCI Recognition wherein petitioners have passed second year, registration cannot be granted to petitioners as per rules of Pharmacy Council of India and Pharmacy Act, 1948.

7. In this matter, on behalf of respondent No. 5, affidavit in reply is filed by one Devendrasinh Dalabhai Parmar on 16th June, 2010, Page 39. Para 2 to 5 thereof being relevant, are quoted as under:

2. At the outset, it is submitted that the Resp. No. 3 after verifying all the documents, necessary infrastructure necessary equipments, etc., had granted the recognition for the Pharmacy College to our Trust from 2005-06 Pursuant to the said recognition, provisional No Objection Certificate was granted by the Resp. No. 1 by an order dtd. 23.6.2005 and the Resp. No. 3 approved the intake of 60 students by an order dtd. 25.8.2005. Copies of the orders dtd. 23.6.2005 and 25.8.2005 are annexed hereto and marked Annex.I to this reply. Thereafter, we had deposited an amount of Rs. 6 lakhs with the Resp. No. 4 and the Resp. No. 4 University granted the affiliation vide order dtd. 22.9.2005 for the period from 15.6.2005 to 14.6.2006. A copy of the order dtd. 22.9.2005 is annexed

hereto and marked Annex.II to this reply. Thereafter, as per the rules, the Centralized Admission Committee, the Resp. No. 2 allotted 7 students to the Resp. No. 5 College and all the students including the petitioners studied for the whole year and completed the study with all the facilities as per the rules. Therefore, in the petition, the averments that the facilities were not there, are not true and correct.

3. It is submitted that after completion of one year, it was informed by the University to deposit Rs. 20 lakhs for the year 2006-07. The Trust had already deposited Rs. 6 lakhs and it was not known to the trust that the trust would require to deposit further amount of Rs. 20 lakhs immediately and therefore the amount could not be managed immediately and hence the university was requested to grant time. However, the the request was not acceded to and with result, no students were allotted for the year 2006-07. It is pertinent to note that the University had granted affiliation for the year 2005-06 and all the petitioners have successfully cleared the examination of the first year. It is further submitted that it is a 2 years course. Since our institution was not in a position to deposit the amount of Rs. 20 lakhs, the affiliation was not granted for the year 2006-07 and, therefore, students requested for grant of NOC for transfer so that could join the other Colleges. Copies of the applications made by the petitioners are annexed hereto and marked Annex.III to this reply. However, since our institution could not give No Objection Certificate for the transfer, the necessary certificate was issued at the relevant point of time and thereafter all the students had taken admission in the respondent No. 6 College for the second year.

4. It is respectfully submitted that they had cleared the second year and requested the Resp. No. 7 to issue necessary certificate showing that they are qualified Pharmacists under the Pharmacy Act. In the present petitions, the prayers are against the Resp. No. 4 University and, therefore, the Trust has no objection if the prayers are granted as sought for.

5. It may be pointed out that the petitioners have studied in our college only for the year 2005-06 during which the affiliation of the University was very much there with the College and, therefore, it is totally incorrect that our institution was not an approved college. As aforesaid, the Resp. No. 3 had granted the recognition and the University has granted the affiliation and therefore the petitioners have passed out the first year from the recognized College and therefore necessary certificate is required to be granted.

8. As per page 44 Annexure I to affidavit in reply filed by respondent No. 5, No Objection Certificate dated 23.6.2005 is issued to the effect that Government of Gujarat has no objection for starting of Diploma Pharmacy Course on Self Finance Basis to be conducted by Divya Drusti Diploma Pharmacy College, near Reckvina Pharmacy at and post Bedia Taluka Kalol, District Panchmahals subject to approval of AICTE, New Delhi, Said certificate is issued by Dy. Secretary, Education Department to Government of Gujarat for purpose of getting affiliation from concerned university. All India Council for Technical Education has also

granted approval in favour of respondent No. 5 vide letter dated 25th August, 2005 for purpose of conducting diploma course in Pharmacy with course and intake capacity as mentioned in said letter, 60 seats with specific condition that admission shall be made through Centralized Counseling by Government of Gujarat only for year 2005-06. Said approval has been accorded by AICTE subject to fulfillment of norms and standards of Council for the course and intake approved above. As per said letter dated 25th August, 2005, All India Council for Technical Education has given approval to Diploma Course to Pharmacy with certain condition and copy of said letter has been sent to Gujarat University. Thereafter, Gujarat University has by letter dated 22nd September, 2005, granted recognition to respondent No. 5 institution for 60 seats in the subjects-courses of Diploma in Pharmacy (Self Finance) for 60 seats having adhoc (new) affiliation for a period from 15.6.2005 to 14.6.2006. Respondent No. 5 has deposited Rs. 20 lakhs only before Gujarat University on 22nd September, 2005. According to reply given by respondent No. 5, after completion of one year, it was informed by university to deposit further Rs. 20 lakhs for the year 2006-2007. Respondent No. 5 had already deposited Rs. 6 lakhs and it was not known to respondent No. 5 that the trust would be required to make further deposit of Rs. 20 lakhs immediately and for that amount, respondent No. 5 could not manage immediately and it was requested by respondent No. 5 to Gujarat University to grant some time but that request was turned down which resulted in situation that no students were allotted for the year 2006-2007. Petitioners have successfully cleared examination of first year and it was having two years course and respondent No. 5 was not in a position to deposit further amount of Rs. 20 lakhs for year 2006-2007 and, therefore, students means petitioners requested for granting NOC for transfer for enabling them to join other college. However, according to respondent No. 5, their institution could not give No Objection Certificate for transfer. Necessary certificate was issued at the relevant time and thereafter, all students had taken admission in respondent No. 6 College for 2nd Year. Respondent No. 5 also made it clear that if prayer made by petitioners in these petitions is granted in their favour, respondent No. 5 has no objection because petitioners have completed successfully one year course of diploma in pharmacy with respondent No. 5. At the relevant time, in 2005-2006, respondent No. 5 college was having affiliation with Gujarat University and also provisional NOC was granted dated 23rd June, 2005 by Education Department and also approved by All India Council for Technical Education and thereafter, petitioners have been transferred to college of respondent No. 6 and that is how future of petitioners has been put into dark.

Respondent No. 3 Pharmacy Council of India has raised preliminary submission in paragraph 1 and 2 page 40 as under:

PRELIMINARY SUBMISSIONS:

1. It is submitted that the answering respondent is a statutory body working under the Pharmacy Act, 1948 (hereinafter referred to as the Pharmacy Act for

short). The Act was passed by the Parliament to make better provisions for the regulation of the profession and practice of Pharmacy throughout the country. Pharmacy Council of India is constituted u/s 3 of the Pharmacy Act. As per the provisions of the Act, the answering respondent has power to grant approval or to withdraw the same, of an educational institution for non-compliance of the provisions of the Act and Education Regulations framed thereunder.

2. I say that, in the present case, the D. Pharm course conducted at the respondent No. 5 Pharmacy College is not approved by the answering respondent u/s 12 of the Pharmacy Act for the purpose of registration as a pharmacist.

9. Reliance has been placed by respondent No. 3 on Section 12 of Pharmacy Act, 1948. According to learned Advocate Mr. Dhaval Nanavati for respondent No. 3, if institution is not recognized u/s 12 of Pharmacy Act for completed study of two years diploma in pharmacy, then, student is not entitled to have registration as Pharmacist. Learned Advocate Mr. Nanavati for respondent No. 3 also raised contention before this Court that respondent No. 5 does not have approval of respondent No. 3 and petitioners who have undergone first year of their study in respondent No. 5 institution have undergone unapproved course and then transferred to affiliated college, therefore, according to him, both colleges, one at which students studying at present and one to which migration is sought should be recognized by respondent No. 3. Respondent No. 3 has also given reply on merits. The only objection raised by Pharmacy Council of India is that respondent No. 5 is not having approval from Pharmacy Council of India, means, it is unapproved institution where study was completed by petitioner for first one year and, therefore, unless and until both colleges, one at which student is studying at present and one from which migration is sought are having recognition from respondent No. 3, such student cannot be given registration by Pharmacy Council of India, since that fact has not been found in favour of petitioners in facts of present case and, therefore, petitioners are not entitled to get reliefs claimed in these petitions. It is also submitted by learned advocate Mr. Nanavati for respondent No. 3 that u/s 2(b) of Pharmacy Act, 1948, the word "approved" has been defined that; "approved" means approved by the Central Council u/s 12 or Section 14. Thus, as per submission made by learned Advocate Mr. Nanavati for respondent No. 3, it is necessary that diploma course in pharmacy undergone by petitioners should be approved u/s 12 of Pharmacy Act for having registration u/s 32(2) of the Act. He relied upon certain decisions as referred to in reply in detail where learned Advocate Mr. Nanavati for respondent No. 3 submitted that in such circumstances, court should not have to interfere and should not grant such relief in favour of petitioners those who have not prosecuted their studies in approved institution and no sympathy can be shown in favour of petitioners. As per page 65 annexed to reply filed by respondent No. 3 dated 12th June, 2001, guidelines for migration/transfer of students have been issued by Pharmacy Council of India which being relevant, are quoted as under:

10. Subject: Guidelines for migration/transfer of students.

Sir, With reference to subject cited above, I am directed to inform that the Council in its meeting held on 21st and 22nd May, 2001 has decided to approve the following guidelines for migration/transfer of students from one institution to another.

Guidelines for migration/transfer of students.

a) Migration from one Pharmacy College to other is not a right of a student. However, migration of students from one pharmacy college to another pharmacy college in India may be considered.

b) Both the colleges i.e. one at which the student is studying at present and one, to which migration is sought, should be recognized by the PCI.

c) The total intake including transfer in an institution where the migration/transfer is sought, shall not exceed 5% of the sanctioned intake by the PCI in a year.

d) All applications for migration/transfer shall be referred to University/Examining Authority by the college Authorities. The University/Examining Authority shall be authorized to approve transfer under intimation to PCI, based on the guidelines for migration/transfer framed by the PCI.

e) It is mandatory for the concerned institution, i.e. the institution at which the student is studying at present and one to which migration/transfer is done, to intimate about such transfer to PCI within one month of transfer.

Copy of certain decisions are annexed to affidavit in reply filed by respondent No. 3 which is very bulky record and number of decisions of various High Courts are annexed to affidavit in reply by respondent No. 3.

On behalf of respondent No. 5, further affidavit is filed which is at page 223. Para 1 and 2 thereof being relevant, are quoted as under:

1. I have earlier filed an affidavit wherein in para 2 through typographical mistake, it is mentioned that the respondent No. 3 approved the intake of 60 students by an order dated 28.8.2005. Copy of the letter was also annexed along with the affidavit. However, instead of Respondent No. 3 it should have been All India Council for Technical Education and, therefore, the same may be permitted to read as All India Council for Technical Education instead of Resp. No. 3.

2. It is further submitted that the in the order which is challenged in petition, it is ordered that the students are not given certificate as the Resp. No. 5 is not having the PCI Recognition. It is respectfully submitted that our institution was continued only for one year and as per the procedure, the institution is granted the PCI Recognition only after the first year is completed and the students will get the same only after completion of two years. As our institution is closed down after one year, there was no question of granting PCI but however the institution was granted the recognition by

3. All India Council for Technical Education: and was also granted the affiliation by the Gujarat University and all the petitioners and other students were admitted through Centralized Admission Process and they were permitted to appear in the examination held by the Gujarat University and have successfully cleared the first year. In view of this, the ground shown for not issuing certificate is improper and unjust.

Further affidavit in reply is filed on behalf of respondent No. 3 PCI which is at page 226. Para 4 to 10 thereof being relevant, are quoted as under:

4. It is stated that the answering respondent is a statutory body working under the Pharmacy Act, 1948 (hereinafter referred to as the Pharmacy Act for short). The Act was passed by the Parliament to make better provision for the regulation of the profession and practice of Pharmacy throughout the country. Pharmacy Council of India is constituted u/s 3 of the Pharmacy Act. As per Section 12 of the Act, the answering respondent has a power to grant approval of the course of study for pharmacist being conducted by an institution of said course of study is in conformity with the Education Regulations framed u/s 10 of the Pharmacy Act or to withdraw the same for non compliance of the provisions of the Act and the Education Regulations framed thereunder.

5. It is stated that it is a well settled principle of law that powers under Article 226 of the Constitution have to be exercised to set right such actions of authorities which are illegal. The power under Article 226 cannot be exercisable and are not to be expected to be exercised to nullify the mandatory provisions of law unless and until the law is shown to be ultra vires. No question of provisions of the Pharmacy Act being ultra vires is raised nor any challenge has been made so far. Therefore, firstly powers under Article 226 cannot be exercised to perpetuate the illegality. The writ of mandamus can be claimed by the petitioners to enforce their rights, fundamental or statutory, which have been denied or which have been rendered ineffective by omission or negligence of the authority to perform its statutory duty by the performance of which the right could be fulfilled if the authority has been called upon to perform its legal statutory duties and it has failed.

6. It is stated that the petitioners have taken the reference and relied on the case decided by this Hon'ble Court in the case of Chintan Narharibhai Shah v. State of Gujarat being SCA No. 14795 of 2003 and more particularly has relied on the order passed by this Hon'ble Court (Coram: Kundan Singh, J.) dated 29.11.2003. In this connection, it is stated that the facts of the case are totally different than the case on hand. The facts of the SCA No. 14795 of 2003 are that the Institute Sanskar Education Trust, Pipaliya, TA. Vaghodia, Dist. Vadodara had approached the answering respondent council on 13.9.2003 for approval of the course, which was pending with the Council and during pendency of the approval, the Institution had given admission. Whereas in the present case, the respondent college, being Divya Drushti Charitable Trust had neither applied nor approached the answering respondent for approval u/s 12 of the Pharmacy Act.

Hence, the facts of the case of the Chintan N. Shah are totally different in the present case.

7. It is stated that the writ of mandamus can be claimed only to enforce the rights, fundamental or statutory, which have been denied or rendered ineffective by omission or negligence of authority to perform its statutory duty. Here in the present case, the institution had not approached the answering respondent for consideration of required statutory approval u/s 12 of the Act. Hence it can not be said by the petitioner that the authority (i.e. the answering respondent) failed to perform its statutory duty.

8. It is stated that the Divya Drushti Charitable Trust Institution respondent No. 5 was fully aware of the fact that the Trust has never approached much less applied for the approval u/s 12 of the Pharmacy Act before the Pharmacy Council of India answering respondent. Even the said fact is also evident from the reply filed by the Institution wherein no whisper much less say about any application for approval is preferred before the Respondent No. 3 Council for necessary approval for conducting Diploma in Pharmacy course u/s 12 of the Act. But only with a view to mislead this Hon"ble Court the respondent No. 5 have stated that they have applied and the respondent No. 3 Pharmacy Council of India has granted approval and issued a provisional No Objection Certificate in favour of the institution. However, after some time and more particularly after answering respondent Council's reply and even during the arguments when it was insisted upon respondent No. 5 institution to produce the copies of approval and provisional NOC of answering respondent as a evidence on record as stated by them in their affidavit, the institution has filed rectification counter affidavit stating that a typographical mistake took place and instead of respondent No. 3 Pharmacy Council of India, it should be read All India Council for Technical Education and not Pharmacy Council of India. It makes clear that the institution has at no point of time approached much less applied to the Pharmacy Council of India to accord the approval u/s 12 of the Act. With regard to respondent No. 5 statement that "there institution was continued only for one year and as per the procedure, the institution is granted the PCI. recognition only after the first year is completed and the students will get the same only after completion of two years. As our institution is closed down after one year, there was no question of granting PCI." It is most respectfully submitted that Answering Respondent-3, grants year wise approval for the conduct of "course of study" before considering final approval u/s 12 of the Pharmacy Act, 1948 for the purpose of registration as a pharmacist. For this, an institution has to apply 9 months in advance of starting the course. Hence the petitioner should have applied to answering respondent 9 months in advance of proposed date of starting the course for consideration of approval.

9. It is stated that from the bare perusal of the documents and the papers attached to the memo of writ petition and the reply filed by the respondent No. 5 institution does not suggest that admission of the petitioners were through the

Central Admission Committee of the State Government much less the petitioners have not produced any proof of the valid admission or closure of the college and the transfer order transferring all those petitioners to the other college by the competent authority.

10. It is stated that Diploma in Pharmacy course conducted at the institution in which the petitioner has completed his first year in D. Pharm is not approved by the respondent No. 3 as the institution, at no point of time, applied for the approval from the respondent No. 3. In fact, since respondent No. 5 institution has not approached the respondent No. 3 for an approval, the respondent No. 3 has not granted much less taken a cognizance about the said institution for considering approval u/s 12 of the Act. Since the conduct of the course of study at respondent No. 5 institution is not approved by the respondent No. 3 the first year course undergone by the petitioner is not an approved course of study for the purpose of admission to the approved examination for the pharmacist and in absence of such approval, the respondent No. 7 has rightly refused to register the petitioner's name as pharmacist u/s 32(2) of the Act.

11. Affidavit in rejoinder is also filed by petitioner against affidavit in reply filed by respondent wherein averments made in para 5 to 11 page 233 to 234 being relevant, are quoted as under:

5. In reply to para 2 of Reply on Merits, I state and submit that it is not true that I have undergone an unapproved course for First Year of my study. Because the course is already approved by the respondent No. 3 to the Gujarat University and the said course was conducted by the Gujarat University. I state that there is no individual courses for each and every colleges of Pharmacy.

6. In reply to para-3 of Reply on Merits, I state and submit that it is not true that all the petitioners have not taken admission through Central Admission Committee of the State Govt. Because in Gujarat there is no any scope to take admission in the Technical Colleges directly.

7. I state and submit that the authorities cited by the Respondent No. 3 are not relevant as far as present petitions are concerned and therefore I deny all the authorities cited by the respondent No. 3.

8. In reply to para 9 of Further Affidavit in Reply filed by respondent No. 3 Pharmacy Council of India, I state and submit that it is not true that I and other petitioners had not taken admission through Central Admission Committee of the State Government. It is proved by the mark-sheets of Gujarat University of 1st year because in Gujarat, only the students of a college which is affiliated to Gujarat University can only seat in the examination of Gujarat University and therefore the reply given by the respondent No. 3 is baseless.

9. I state and submit that no institution can get approval within 9 months because as per practice and procedure the respondent No. 3 only approve institution which complete first batch of the Diploma or Degree Course. Because

there is scheme of yearly inspection for granting approval to any institution and therefore the statement of respondent No. 3 is not true.

10. I state and submit that Authority means University not any Institution. It is clear from the act itself.

11. I state and submit that there is no fault on part of me and other petitioners as I and other petitioners have taken admission through Central Admission Committee and we have passed examination of Gujarat University. There is no fault on part of me or other petitioners. Even the Supreme Court has taken liberal view for the students.

12. It is relevant and important to note material facts which have been highlighted by Gujarat University, respondent No. 4 by filing affidavit in reply at Page 235. Therefore, para 2 to 9 of affidavit in reply filed by respondent No. 4 are quoted as under:

2. I submit that the petitioner passed his HSC Examination from Gujarat Secondary and Higher Secondary Examination Board, Gandhinagar in the Science Stream held in March, 2005."

3. I submit that the petitioner took admission to Diploma in Pharmacy Course through Management Quota in respondent No. 5 Divya Drusti Charitable Pharmacy College, Bedia Taluka Kalol, District Panchmahal for the academic year 2005-2006. The respondent No. 5 college was granted affiliation by respondent No. 4 Gujarat University on ad-hoc basis on 20.9.2005 for the period from 15.6.2005 to 14.6.2006. Respondent No. 4 was also granted No Objection for Diploma in Pharmacy Course for academic year 2005-6 on 23.6.2005.

4. I submit that approval in Diploma in Pharmacy course was accorded by AICTE to the respondent No. 5 college on 25.8.2005.

5. I submit that the petitioner appeared at the examination of Diploma in Pharmacy (Part-I) conducted by respondent No. 4 held in April, 2006.

6. I submit that respondent No. 5 college was not granted registration by Pharmacy Council of India and hence the students who studied and completed Diploma in Pharmacy (Part-I) in respondent No. 5 College were transferred to respondent No. 6 Jayshanker Mahashankar Pandya (Savliwala) Diploma in Pharmacy College, Pipaliya, Taluka Vaghodiya, Dist. Vadodara Respondent No. 5 college gave permission for transfer of the said students by granting No Objection (Pg-56).

7. I submit that respondent No. 6 college is recognized for Diploma in Pharmacy by the Pharmacy Council of India. Respondent No. 6 is also affiliated with respondent No. 4 Gujarat University.

8. I submit that the petitioner has undergone his study in Diploma in Pharmacy (Part-I) in respondent No. 6 college during academic year 2006-07 and passed examination of Diploma in Pharmacy (Part-II) conducted by respondent No. 4

University in April, 2007.

9. I therefore submit that the petitioner has undergone his study in Diploma in Pharmacy (Part-I) course in respondent No. 5 in Academic Year 2005-06 and Diploma in Pharmacy Part II in respondent No. 6 during academic year 2006-07 and passed Diploma in Pharmacy.

13. Respondent No. 3 has, in his affidavit in reply, referred to and relied upon certain decisions of various High Court. Therefore, same are considered and quoted as under.

14. Respondent No. 3 relied upon one decision of Karnataka High Court dated 3rd September 1999 rendered in WP No. 36060 of 1997, which is quoted as under:

15. This petition is filed under Articles 226 and 227 of the Constitution praying this Court to direct the respondent to issue the Diploma in Pharmacy Certificate to the petitioner etc.

16. This petition coming on for hearing this day, the Court made the following:

ORDER

1. The petitioner claims to have taken admission in two years diploma course in Pharmacy in TPM College of Pharmacy, Shahpur, during the academic year 1992-93. Admittedly the institution had not obtained recognition as required u/s 12(1) of the Pharmacy Act, 1948 and the Regulations framed therein. Despite the aforesaid facts the petitioner had managed to sit at the examination conducted by the Board of Examining Authority. As pointed out by the learned Counsel for the respondent No. 1 Board, it is ex facie impermissible but the Board having realized the mistake committed by it did not issue any certificate. Under these circumstances the present writ petition has been filed with a prayer to direct the respondents to grant the certificate of diploma in Pharmacy.

2. In my opinion, keeping in view the statutory provisions as also the law laid down by the Supreme Court, petitioner is not entitled to relief as sought for. Admittedly the petitioner claims to have taken admission in an unauthorized institution purporting to conduct Pharmacy course. The Supreme Court in the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, has held that students who have taken admission in an unauthorized college have no right to seek any relief in terms of the direction from the Court to sit at the examination or accommodation in a recognized institution to pursue their further studies. In a recent judgment of the Supreme Court in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, wherein it has been held that:

We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue

certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students.

3. In view of the above no relief can be granted. Writ petition is accordingly dismissed.

17. Respondent No. 3 also relied upon another decision of Karnataka High Court dated 24th November 1993, Page 96 in WP No. 20790-20798-20799-20800 of 1986. The relevant portion of the aforesaid order passed by Karnataka High Court is quoted as under:

These Petitioners are filed under Articles 226 and 227 of the Constitution praying to quash the order annexure-J bearing No. 17-249/84-PCI/7821-23 dated 20.11.86 and to direct the 3rd respondent to accord approval for the course started by the 1st petitioner in D. Pharm Course.

These petitions coming for hearing this day, the Court made the following:

ORDER

The 1st petitioner wanted to improve education in Pharmacy and therefore wanted to start Pharmacy College at Bangarpet. When such permission was sought for the Pharmacy Council of India conducted inspection of the institution and on receipt of the report from there as declined to grant no-objection certificate to start the diploma Course in Pharmacy. In view of this communication the petitioner was not allowed to start the said college and said communication thereto was sent to the petitioner as early as 20th November 1986. The orders made by the respondent refusing to recognise the institution was challenged before this Court and this Court on 2.12.86 declined to grant any interim order as the Pharmacy Council of India had rejected the same even as early as 22.6.86. After following due procedure prescribed the same was rejected again by another communication dated 20.11.1986. When repeatedly, the authorities concerned are refusing to recognise the first petitioner institution, no relief can be granted to the petitioner at this stage. Further, if any of other petitioners have taken examination from this unrecognized college they cannot be permitted to take such examination either. Therefore, they cannot also be given any relief. Therefore, this petition is dismissed. Rule discharged.

18. Respondent No. 3 also relied upon one decision of Punjab and Haryana High Court at Chandigarh passed in CWP No. 14558 of 1996. The relevant observation made by Punjab and Haryana High Court in Para 15 is quoted as under:

15. The above shortcomings clearly reveal that the institution has failed to provide infrastructure facilities as per prescribed in Appex.B of ER-91 required for approval of the D. Pharma course u/s 12 of the Pharmacy Act, 1948 and conducted the course for 1991-1992 & 1992-93 session when facilities to run the same were not available. Further any improvement made now will be of no relevance and benefit to the students who were admitted in 1991.

It is further informed that the Council vide letter No. 17-385/92-PCI/1957 dated 2nd May, 1996 has rejected the representation of the students of the institution in pursuance of orders dated 31.10.1995 passed by the Division Bench of Hon"ble Punjab and Haryana High Court in CWP No. 14172 of 1995 filed by Gurmeet Singh and Ors. I am further directed to inform that the above facts including your fresh SIF dated 18.11.1996 was considered by E.C. of the Council in its meeting held in Feb.1997 which decided to recommend to the Council not to approve the conduct of diploma course and examination in Pharmacy for the year 1991-92 and 1992-93 as requested by the College.

19. For the afore-mentioned reasons given by the Pharmacy Council of India, it is not possible for us to give directions to the respondents to accord recognition to the College.

20. It is then contended by the learned Counsel for the petitioner that the petitioners have undergone the course for two years and on account on of irresponsible action on the part of the college the petitioners should not be made to suffer and at least for the session for which petitioners had undergone the course may be recognized. This contention is only to the noticed to be rejected. In *Saroj Rani and Ors. v. State of Haryana and Ors.* AIR 1996 Punjab and Haryana 241, this very contention was noted and rejected by the Division Bench in the following terms:

Held that anything done or permitted to be done in detriment to the provisions of the Act, Rules, Regulations and terms and conditions of the Brochure will not only be prejudicial to the interest of the students so admitted but would adversely affect the requisite standards of high education and training. Non-implementation of instructions / direction issued by statutory authority are bound to prove counter-productive and would not be in the interest of the society at large. Circumventing completion of required course of Pharmacy or circumventing requisite period of study will complete lack of requisite infrastructure is bound to prove fatal to the academic career of the students. Thus the All India Council for Technical Education was justified in refusing the original registration of these students and not permitting them to take their examination. The eligibility conditions declared for admission to pharmacy course were binding on the students. Since they had not undergone the requisite period of study. They could not insist that their admissions be regularized and they should be allowed to take 2nd year examination. It is a matter of concern, that two years of the students are likely to be wasted, but the mere ground of compassion cannot be a reason enough to permit violation of the Rules and encourage back door entry to such courses and specially the courses which are technical in nature and are practical and essential .

21. Consequently, we have no option but to dismiss the writ petition. It is so ordered.

22. Similarly, number of orders in respect to identical case have been relied upon

by respondent No. 3, where, similar prayer made by petitioner before this Court has been rejected.

23. Respondent No. 3 further relied upon one decision of Karnataka High Court dated 23rd November 2001 passed in WP No. 7712 & 7713 of 2000, where, appeal is preferred by Pharmacy Council of India. The relevant facts and discussion is made at Page 203 and Page 211 to 215, which is quoted as under:

2. The facts in brief leading to this proceedings are as hereunder:

The first respondent joined the B. Pharm course in the second respondent college of Pharmacy in the year 1989. The said college is affiliated to Gulbarga University. The first respondent completed B. Pharma course in the year 1993 in First Class and she was given a degree certificate by the Gulbarga University. Subsequently, she joined a private firm where she was working till the year 1996. The first respondent got married and her husband is working in USA. When she was about to leave for USA, she was informed that she must obtain a certificate from the karnataka State Pharmacy Council as a registered pharmacist in order to enable her to practise as a pharmacist in United States. The first respondent approached the second appellant herein to issue a certificate as a registered pharmacist. The registered of the second appellant herein informed the first respondent that it is not possible to grant such a certificate as she is not a registered pharmacist and the second respondent college where she studied is not an approved college u/s 12 of the Act and she has not undergone the course which is approved by them. Therefore, she was constrained to file the Writ Petition for a writ of mandamus directing the second appellant herein to issue a certificate as a registered pharmacist under the Pharmacy Act, 1948 (hereinafter referred to as the Pharmacy Act".)

12.

xxx This section provides for two categories of registration. The first category is as contained in Section 32(1). All persons who have made application after the date appointed under Sub-section (2) of Section 30 namely 30.10.1961 and before the education regulations have by or u/s 11 taken effect in the State namely 6.8.73 and who satisfy the condition prescribed u/s 31 or who are registered pharmacists in another State or who possess a qualification approved u/s 14 are entitled to have their name entered in the register if they reside or carry on the business or profession of pharmacy in the State. Sub-section (2) of Section 32 state that a person who has passed an approved examination or possess a qualification approved u/s 14 or is a registered pharmacist of another State who has made an application after the education regulations have by or u/s 11 taken effect in the State is entitled to have his name entered on the register if he has attained the age of 18 years, if he resides or carries on the business or profession of pharmacist in the State. A conjoint reading of these sections make it very clear that the aforesaid provisions provide for three categories of persons who are entitled to have their names entered in the register.

They are: (a) Persons who have made applications for registration before 30.10.1961 and who possess the qualification prescribed u/s 31;

(b) Persons who have made application after 30.10.1991 and before 6.8.1973 when the Education Regulations of 1972 came into effect who has qualification prescribed u/s 31 and

(c) Persons who have made applications subsequent to 6.8.1973 onwards and who have passed an approved examination or possess a qualification approved u/s 14 or a registered pharmacist in another State.

The Pharmacy Act does not provide for education regulations for a degree in B. Pharm. Section 10 makes it explicitly clear that the regulations to be made by the Central Council with the approval of the Central Government is only prescribing the minimum standard of education required for qualification as a pharmacist. They have prescribed diploma in Pharmacy as the minimum standard of education. A degree in pharmacy would be a higher qualification than the minimum that is prescribed u/s 10. Section 10 does not contemplate education regulations for a degree in B. Pharm or a Masters Degree in B. Pharm as it deals only with minimum standard of education. There is no necessity for the Central Council to pass regulations prescribing qualification for degree in B. Pharm. All that the law requires is they should make regulations prescribing the minimum standards of education required for qualification and one any course imparted by the college satisfies the minimum standard of education the said course of study would be approved by the Central Council for the purpose of admission to an approved examination for pharmacist. Therefore, the education regulations of 1972 for the diploma in Pharmacy which was substituted by education regulations of 1981 for the diploma course in pharmacy which was later substituted by education regulations, 1991 for the diploma course in pharmacy, prescribes the minimum standard of education required for qualification as pharmacists. The Central Council, if it is satisfied that the degree in B. Pharm course satisfies the aforesaid education regulations, they would approve the course of study and they will also approve the examination for the purpose of qualifying for registration as pharmacist under the Act. All persons who have joined the Degree in B. Pharm after 6.8.73 when the education regulations came into effect and joined courses approved by the Central Council and passed examination approved by the Central Council would be entitled to have the names entered in the register. Those students who pass the course conducted by the various colleges which are affiliated to the universities but those courses are not approved by the Central Council and pass the examination which are not approved by the Central Council are ineligible to have their names entered in the register. Therefore, the argument of the learned Counsel for the respondent that in the absence of education regulations providing the requisite qualification for a degree in B. Pharm the education qualifications for diploma course which prescribes the minimum standard of education is not applicable to the first respondent has no basis.

13. The undisputed facts are the first respondent obtained the degree in B. Pharm after the education regulations came into force. The B. Pharm course which she studied in the second respondent college is not an approved course of study under the education regulations of 1972. The examination of B. Pharm course conducted by the Gulbarga University or the second respondent college was not an approved examination for the purpose of qualifying for registration as a pharmacist. The B. Pharm course was approved by the second respondent herein only in the year 1993 much later the first respondent obtained a degree in B. Pharm.

14. Neither the degree in B. Pharm course nor the examination conducted for the said course are approved by the Central Council u/s 12 of the Pharmacy Act. As the first respondent has joined the said course after the education regulations have come into effect unless she joins an approved course and passes an approved examination she is not entitled to have her name entered in the register u/s 32(2) of the pharmacy Act. To such a person Section 32(1) has no application because Section 32(1) only deals with persons either who have made application or who have obtained a degree or diploma in Pharmacy during the period 30.10.1961 i.e. after the date appointed under Sub-section (2) of Section 30 and before 6.8.73 the date on which the education regulations have taken effect in the State. Therefore, the impugned order passed by the learned single Judge holding that the case of the first respondent falls u/s 32(1) of Pharmacy Act is not proper and consequently the direction issued to the appellants to enter the name of the first respondent in the register cannot be justified. Consequently, the impugned order is liable to be set aside and accordingly it is set aside. Hence, we pass the following:

ORDER

1. Writ Appeals are allowed. The order of the learned single Judge dated 14.9.2000 is set aside. Writ Petition is dismissed. No costs.

24. Respondent No. 3 also relied upon decision of Karnataka High Court dated 13th June 2002 in WP No. 281 of 1999 and WP No. 3365-3370 of 1999. The relevant observation is made at Page 218 & 219 which is quoted as under:

Both the learned Counsel for the parties submit that, in view of the decision rendered by this Court in W.P. Nos. 5981-5986/1999 dated 5.2.2001, no relief as sought for in the present Writ Petition can be granted in the absence of approval from the Pharmacy Council of India the 4th respondent herein. But, the learned Counsel for the petitioners submits that in spite of the said deficiency by the management, the State Authorities have permitted the students to complete the course in an unorganized institution and also permitted them to appear for the examination. Subsequently, the authorities have issued the Certificates in favour of the petitioners. Therefore, the learned Counsel for the petitioners submits that the career of the students are stake at this length of time if it is to be held that the studies completed by the students cannot be recognized.

2. In view of the said situation, the petitioners are reserve liberty to take such steps against the erring respondents in appropriate proceedings for damage, if any.

With the above observation, the Writ Petitions are dismissed.

25. As against that, learned advocate Mr. Chudasama relied upon Paras 7 to 9 of one decision of this Court in case of Chintan Narharibhai Shah v. State of Gujarat in Special Civil Application Nos. 14795 of 2003 with Special Civil Application No. 15202 of 2003 and Special Civil Application No. 15221 of 2003, dated 29.11.2003. The relevant Paras 7 to 9 are quoted as under:

7. I have gone through the relevant provisions of the law. Further the learned advocate for the petitioners has made out a prima facie case in favour of the petitioners. The learned advocate for the respondent No. 4 - University has filed an affidavit wherein stand of the University in regard to make clarification pursuant to the court's order dated 13-10-2003 has been stated. The students who are already admitted upto the academic year 2002-2003 i.e. till the last year, and are studying at present may be allowed to complete their studies and for the said purpose, such students should be transferred and should be allotted to other colleges running the same course to which the present respondent No. 4 University has no objection if such alternative arrangement for absorption of the existing students is ordered by this Court. The authorities / respondents, including Pharmacy Council of India, All India Council for Technical Education (AICTE), the Gujarat State Pharmacy Council and the State of Gujarat and all other concerned authorities shall also be agreeable for such an alternative arrangement which is proposed by the petitioners and to which the University has no objection in principle i.e. the transfer of existing students to such other institutions, which are recognized and affiliated to all the concerned authorities. It is also stated that the respondent No. 5 Trust running the institution should not be permitted to continue Pharmacy College. It is also stated that the fees and other expenses, which have been already charged from the students for the last academic year i.e. 2003-2004 by the respondent No. 5 - Management should be ordered to be refunded back to the petitioners for the current academic term, so that the students can pay the said amount of fees to other college or Institute, where the students may be ordered to be transferred and absorbed. Thus, the proposal of the University is that the students who are admitted upto academic year 2002-2003 till the last year and are studying at present shall be allowed to complete their study and for the said purpose the students should be transferred and allowed colleges running the same course to which the University has no objection if such alternative arrangement for absorption of the existing students is made, the respondent No. 5 should not be permitted to continue the college and the undertaking must be obtained from the respondent No. 5 - Management of the college and fees and other expenses already charged from the students should be refunded back to the students for the current academic term so that the students can pay the amount to other colleges or institution

where the students will be transferred or absorbed. The respondent No. 6 - Indian Institution of Technology has sent the affidavits to this Court to be filed in the petitions wherein it is stated that in the event, this Court prima facie considers that the petitioners have made out any case against the other respondents and desires that so far as said students are concerned who may not be blamed for what has transpired between them inter se with the other respondents with which IITs are not concerned but with a view to see that the students do not ultimately suffer, the last date for receipt of the forms which was upto 30-10-2003, this Court may extend as a special case by another seven days i.e. upto 06-11-2003 and in that event the IITS should forthwith be informed to enable them to consider as a special case this extension of time only for the said students in whose favour the Court may pass an order not as a matter of right but as a matter of discretion and considering the welfare of the students.

The facts of the decision cited by the learned advocate for the respondent No. 3 are totally different with the facts and circumstances of the present case and prima facie the learned advocate for the respondent could not show any authority or any statutory provisions of law under which approval of the Institution is required under the provisions of Pharmacy Act. As such approval by the Pharmacy Council of India is not required for the Institution but the approval is required only for the course of study and the examination as appeared from the relevant provisions of the law which are already approved by Respondent No. 3 - Pharmacy Council of India. Moreover, it was also pointed out that all the students are undergoing studies of B. Pharm. in that respect it was pointed out from the letter dated NIL of the Pharmacy Council of India sent to the respondent No. 5 with reference to letter dated 13-09-2003, it is mentioned that with reference to the subject cited therein it is stated that the Pharmacy Council India does not prescribe the Minimum Educational Standard to qualify degree in pharmacy. As such Pharmacy course as prescribed is already approved by the Pharmacy Council of India though for that purpose minimum standard is not required for the B. Pharm course.

9. On behalf of the respondent a contention was raised that by way of interim relief the petitioners cannot be directed for transfer and admission in other institutions for prosecution of their study as allowing interim relief would amount to allow the petitions at this stage. No doubt ordinarily Courts should refrain to pass orders from such interim relief which amounts to allow the main relief of petition but facts of these petitions are such which require grant of interim relief at this stage otherwise the career of the petitioners students will ruin for no fault of their which cannot be compensated at all even in terms of money. Hence, the contention raised has no substance particularly the petitioners - students were admitted by the Central Admission Committee of Gujarat State to the Institution run by Respondent No. 5 - Trust for which affiliation was granted by the Gujarat University for the relevant year thereafter the affiliation was not withdrawn by the respondent - University and the Central Admission Committee continued to select and allot the concerned petitioners to the Institution run by Respondent

No. 5 for admission. Thus, they prosecuted their study in the Institution duly affiliated by the respondent - University. Now the University is not permitting the Institution to continue the teaching to the students - petitioners hence, such order is necessary in the facts and circumstances of the case.

26. In light of aforesaid decisions which have been referred to and relied upon by learned advocate Mr. Nanavati on behalf of respondent No. 3, learned advocate Mr. Chudasama for petitioners has submitted that the decisions referred to by respondent No. 3 as aforesaid are not relevant and not applicable to facts of present case. He submitted that there are material difference in facts of the case before hand and, therefore, decisions referred to and relied upon by learned Advocate Mr. Dhaval Nanavati on behalf of respondent No. 3 are not applicable to case on hand. He referred to short notes prepared by him in that regard. Therefore, short notes prepared by learned Advocate Mr. Chudasama on behalf of petitioners giving answer and distinguishing decisions cited by learned advocate Mr. Nanavati on facts are quoted as under:

2). I state and submit that I am giving judgment wise reply as under:

A). In the matter between Mahesh Jhajharia and Ors. v. State of Raj. and Ors. (Page No. 68). In this case both the colleges are not approved by the Pharmacy Council of India and therefore, it is not applicable to the present case.

B). In the matter between Vijaykumar v. The Member Secretary, (Page No. 93) in this case the question involved was to issue Diploma Certificate of Pharmacy to the student and therefore, it would not be applicable to the present case.

C). In the matter between Kamdhenu Educational Scientific v. The Pharmacy Council of India and Ors. (Page No. 96). In this matter the question involved was to start new college of pharmacy and the Recognition was not granted and therefore, it would not be applicable to the present case.

D). In the matter between Kamdhenu Educational Scientific v. The Pharmacy Council of India and Ors. (Page No. 99). In this matter the question involved was to permit the students of petitioner s institution to seat for the First year D. Pharm Examination and therefore, it would not be applicable.

E). In the matter between Gurmit Singh v. The State of Punjab and Ors. (Page No. 112). In this case both the colleges are not approved by the Pharmacy Council of India and therefore, it is not applicable to the present case.

F). In the matter between Ms. Punithavathi N. v. State of Karnataka (Page No. 128). in this case the question involved was to issue Diploma Certificate of Pharmacy to the student and therefore, it would not be applicable to the present case.

G). In the matter between Chauson College of Pharmacy v. Pharmacy Council of India and Ors. (Page No. 131). In this matter the approval of Diploma Course was not granted and therefore, It would not be applicable to the present case.

H). In the matter between Sri Sunil Raosaheb Patil v. The State of Karnataka and Ors. (Page No. 134). in this case the question involved was to issue Diploma Certificate of Pharmacy to the student and therefore, it would not be applicable to the present case.

I). In the matter between Dr. O.P. Katyal v. The State of Punjab etc. (Page No. 149). In this matter the grant Recognition and affiliation for starting classes for the Sessions and recommend the students for admission in 2 years D. Pharm Course and therefore, it would not be applicable to the present case.

J). In the matter between Basavaraj M. v. The Karnataka State Pharmacy Council and Ors. (Page No. 174) in this matter the question involved was whether the pharmacy course would covered under the vocational education and therefore, it would not be applicable to the present case.

K). In the matter between Vishal V. Pendharkar v. State of Maharashtra and Ors. (Page No. 200). In this matter the question involved was to start new college of pharmacy and the Recognition was not granted and therefore, it would not be applicable to the present case.

L). In the matter between Pharmacy Council of India v. Smt. Archana Patwari and Ors. (Page No. 202). in this case both the colleges are not approved by the Pharmacy Council of India and therefore, it is not applicable to the present case.

M). In the matter between Mr. T. Huchappa v. State of Karnataka and Ors. (Page No. 217). in this matter the question involved was whether the pharmacy course would covered under the vocational education and therefore, it would not be applicable to the present case.

27. Learned Advocate Mr. Chudasama for petitioners also placed reliance upon decision of Division Bench of this Court in case of Chinmay Prakash Vora & 29 v. Union of India & 7, in Special Civil Application No. 7841 of 2008 decided on 21.8.2008. The issue raised before Division Bench of this Court was, when a decision is taken not to grant renewal permission to a new College, what is the effect thereof on the bona fide students already admitted and studying in College on the basis of permission previously granted. Relevant discussion made by Division Bench of this Court in para 4 to 10 is reproduced as under:

4. Certain students of the first and certain students of the second batch approached this Court by filing Special Civil Application Nos. 19458 and 19934 of 2005 challenging the non-renewal of recognition. The said petition was not entertained and was disposed of after recording the statement on behalf of the Medical Council of India that the non-renewal of recognition would not affect the students who are already studying and the students who are studying will complete their MBBS course. Prayer regarding recognition for all purposes and non-renewal of recognition was subject to challenging the decision of the Medical Council of India.

5. The first batch of students completed their MBBS course in March 2007. In

terms of the regulations, the students were required to undertake internship of one year. The College in question had also not applied to the Council for grant of recognition u/s 11(2). Since the degree of the College was not recognized, provisional registration was not being considered by the Gujarat Medical Council. Special Civil Application No. 13285 of 2007 was instituted by the students of the first batch. In the said writ petition, pursuant to the interim order passed by this Court, the Gujarat State Medical Council, after considering the representation of the students and in view of the notification issued by the State Government, issued provisional registration certificate, enabling the students to undertake their internship. The said writ petition was finally disposed of by this Court by its order dated 22.08.2007. The University was directed to submit a request to the Medical Council of India for carrying out inspection of the College at the time of final MBBS examination and for approval to award MBBS degree. Once the inspection was undertaken by Medical Council of India, as required u/s 11(2) of the Act, the subsequent procedure was required to be completed by the Central Government latest by 31.12.2007. In terms of the aforesaid, and in accordance with the provisions of the India Medical Council Act, the inspection of the examination as well as the College was undertaken by the Medical Council of India. In so far as the examination is concerned, extract of the report reproduced in the petition indicated -

Overall the examination was conducted satisfactorily. The standard of candidates was sufficient for the MBBS examination as required by the regulations of Medical Council of India.

6. In so far as the inspection of the College is concerned, the report indicated that the College was not meeting with the requirements of infrastructure and other requirements as required under the Medical Council of India Regulations. Having regard to the inspection report of the College, the Executive Committee of the Medical Council decided not to approve Swami Vivekanand Institute of Medical Science, Valia, for the award of MBBS degree.

7. In the meantime, the petitioner students have completed their internship and were awarded the MBBS degree by the South Gujarat University. They applied for registration with the Gujarat Medical Council, however, since the Medical Council of India has not approved the degree of the College, the petitioner-students have been refused registration by the Gujarat Medical Council. In view thereof, the petitioners are unable to practice medicine and/or undertake any further studies.

8. During the course of hearing, no counsel could point out any provisions under the Act or the regulations which provide for such a situation. Even the Essentiality Certificate, which is a pre-requisite for grant of permission, does not deal with the situation in hand. It cannot be gainsaid that there is no fault of any of the petitioners. The default is of the management. Even though the Medical Council of India contends that the degree of the College cannot be recognized since they have not granted renewal permission and virtually the students have been permitted to continue their education and appear in the examination. The

examination has been conducted by the University. It is not in dispute that the standard of the examination is in accordance with the standards prescribed by the Medical Council of India. The Council has itself verified the said examination and approved the standard of the students. The degree conferred by the South Gujarat University is included in the schedule to the Indian Medical Council Act.

9. In these special facts and circumstances, in order to ensure that no injustice should be meted out to the students who have undertaken their education, we propose to dispose of these petitions by directing that the petitioners would have to undertake internship from the recognized College affiliated to the South Gujarat University so as to be in conformity and consistency with the decision of the Medical Council of India about the college not being recognized for the deficiency indicated in their decision. The Essentiality Certificate, which is a prerequisite, does contemplate that if a college does not provide infrastructure facilities and is not recognized, the State is to provide that the students studying from the said college would attend another college, which is recognized and the cost of the infrastructure facilities is to be met by the unrecognized institution. Here, in this case, the students have already passed and the University has conferred the degree upon them. The ends of justice would be met if the petitioners are directed to undertake additional internship with a recognized college affiliated to the South Gujarat University. On completion of the period of internship and upon a certificate being issued in that regard by the concerned authority of the recognized college, the students would be entitled to get registration in the register maintained in terms of the Indian Medical Council Act and the Gujarat Medical Council Act, on the basis of the petitioner having completed their MBBS Degree Course from the recognized Medical College, where they have completed their internship.

10. The petition is accordingly allowed. Respondent No. 5 - Veer Narmad South Gujarat University, shall permit the petitioners to do internship for a period of three months after allotting the students to a recognized medical college affiliated to respondent No. 5 - Veer Narmad South Gujarat University and thereafter respondent Nos. 1 to 6 and 8 shall treat the petitioners as having completed their studies through a recognised medical college for the purpose of recognition of their qualification under the Indian Medical Council Act, 1956. The petitioners shall be allotted to recognised colleges of Veer Narmad South Gujarat University within a week from the date of receipt of a certified copy of this order.

28. In light of aforesaid facts which are almost not in dispute between parties and since at no stage, petitioners are at fault, and yet they are made to suffer because of fact that respondent No. 5 college is not having recognition (approved) by respondent No. 3 Pharmacy Council of India. Petitioners have completed two years" study and have also completed training program as per Pharmacy Act with respondent No. 6 which is having recognition and approved by Pharmacy Council of India. In view of this, affidavit in reply filed by respondent No. 4 Gujarat University is very much relevant where almost

undisputed facts have been put on record by respondent Gujarat University that petitioners have passed their HSC Examination from Gujarat Secondary and Higher Secondary Examination Board, Gandhinagar in Science Stream in March, 2005 and petitioners have taken admission to Diploma in Pharmacy Course in Management Quota through Centralized Admission Committee in respondent No. 5 college for academic year 2005-2006. It is an admitted fact, not disputed by parties to this proceedings that respondent No. 5 College was granted affiliation by respondent No. 4 Gujarat University on ad hoc basis on 20.9.2005 for a period from 15.6.2005 to 14.6.2006 and Gujarat University has also granted NOC for Diploma in Pharmacy Course for the academic year 2005-2006. It is also an admitted fact that respondent No. 5 College also received approval for Diploma in Pharmacy Course by All India Council for Technical Education and petitioners had appeared at the examination of Diploma in Pharmacy Part-I conducted by respondent No. 4 Gujarat University in April, 2006. Thereafter, respondent No. 5 college was closed down and petitioners were transferred to Respondent No. 6 College by granting NOC, Page 57. Respondent No. 6 college is having recognition for Diploma in Pharmacy by Pharmacy Council of India and also having affiliation from respondent No. 4 Gujarat University. Petitioners have undergone their study in Diploma in Pharmacy Part-II in respondent No. 6 College during academic year 2006-2007 and passed examination of Diploma in Pharmacy Part- II conducted by Gujarat University in April, 2007.

29. As per Section 2(b) of Pharmacy Act, 1948, approved means approved by Central Council u/s 12 or Section 14. Section 12 of said Act is providing for approved courses of study and examinations. Section 12 of said Act is very much relevant considering controversy involved in present petition. Therefore, Section 12 of Pharmacy Act, 1948 is quoted 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 it to make, that the said course of study is in conformity with the 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 States 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.

30. Thus, as per Section 12(1) of said Act, any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of course, and Central Council, if satisfied, after such enquiry as it thinks fit it to make, that said course of study is in conformity with the Education Regulations, shall declare said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists and as per Section 12(2) of said Act, any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of examination, and Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with Education Regulations, shall declare said examination to be an approved examination for purpose of qualifying for registration as a pharmacist under this Act and as per Section 12(3) thereof, every authority in the States 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. After considering Section 12 of Pharmacy Act, 1948, it is necessary to note that the word "authority" as has been used in Section 12 of said Act, has not been defined under Pharmacy Act. Therefore, contention raised by learned Advocate Mr. Dhaval Nanavati for respondent No. 3 that respondent No. 5 college has not applied for approval of Pharmacy Council of India cannot be accepted because in facts of present case, any authority would mean Gujarat University and not respondent No. 5 as has been contended by learned Advocate Mr. Nanavati for respondent No. 3 because in facts of this case, Gujarat University is conducting course of study for pharmacist which had applied to Central Council for approval of course and course of study of pharmacy has been approved for the purpose of approved examination for pharmacist. Gujarat University being an authority in a State holds examination in Pharmacy which has been approved by Central Council of India, therefore, course of pharmacy study or course of study for pharmacist has been conducted by Gujarat University which has been approved by Pharmacy Council of India and these petitioners had got admission in a Colleges having affiliation with Gujarat University through Centralized Admission Committee for undergoing course or study of Diploma in Pharmacy and thereafter, examinations were held by Gujarat University for both years which course and examination were approved by Pharmacy Council of India and petitioners were allowed to appear in such examinations approved by Pharmacy Council of India and each petitioner cleared such examinations successfully in both years and passed in said examinations. Therefore, bare reading of Section 12 of Pharmacy Act, 1948 is not suggesting that the College concerned is the authority within the meaning

thereof which would be required to have such recognition or approval as contended by learned Advocate Mr. Nanavati on behalf of respondent No. 3. Therefore, after reading entire Section 12, it is crystal clear in light of affidavit in reply submitted by respondent No. 4 University that the petitioners were allotted to respondent No. 5 College through Centralized Admission Committee for first year and petitioners were not aware about fact that respondent No. 5 College was not approved by Pharmacy Council of India and it was duty of Gujarat University or Centralized Admission Committee to allot or grant admission to petitioners in a College having such recognition or approval of Pharmacy Council of India. It was not necessary condition which is required to be fulfilled by respondent No. 5 because Gujarat University has recognized the College as Self Finance College, having received Rs. 20 lakhs for academic year 2005-2006 as has been discussed by this Court, as referred to above and thereafter, all the petitioners were transferred to respondent No. 6 College which was having recognition and approval from Pharmacy Council of India. Therefore, contention raised by learned Advocate Mr. Nanavati cannot be accepted. In peculiar facts of present case, decisions referred to and relied upon by learned advocate Mr. Nanavati for respondent No. 3 not applicable to particular facts of present case.

31. Further, Section 15A and 15B of Pharmacy Act, 1948 are relevant for purpose of deciding present matter. Therefore, same are quoted as under:

15A. The Central Register.-

(1) The Central Council shall cause to be maintained in the prescribed manner a register of pharmacists to be known as the Central Register, which shall contain the names of all persons for the time being entered in the register for a State.

(2) Each State Council shall supply to the Central Council five copies of the register for the State as soon as may be after the first day of April of each year, and the Registrar of each State Council, shall inform the Central Council without delay all additions to and other amendments in the register for the State made from time to time.

(3) It shall be the duty of the Registrar of the Central Council to keep the Central Register in accordance with the orders made by the Central Council, and from time to time to revise the Central Register and publish it in the Gazette of India.

(4) The Central Register shall be deemed to be public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872) and may be proved by the production of a copy of the Register as published in the Gazette of India.

15B. Registration in the Central Register.- The Registrar of the Central Council shall, on receipt of the report of registration of a person in the register for a State, enter his name in the Central Register.

32. Thus, Section 15A and 15B of Act, 1948 provides that Central Council shall cause to maintain in prescribed manner a register of pharmacist to be known as Central Register which shall contain names of all persons for time being entered

in register for a State. It is necessary for each State Council to supply to Central Council five copies of register for the State as soon as may be after first day of April of each year, and Registrar of each State Council, shall inform Central Council without delay all additions to and other amendments in the register for State made from time to time as per Section 15A(3) of Act, it shall be duty of Registrar of Central Council to keep Central Register in accordance with the orders made by Central Council, and from time to time to revise Central Register and publish it in the Gazette of India and Central Register shall be deemed to be public document within the meaning of Indian Evidence Act, 1872 (1 of 1872) and may be proved by production of a copy of Register as published in the Gazette of India and as per Section 15B of the Act, the Registrar of Central Council shall, on receipt of report of registration of a person in the register for a State, enter his name in the Central Register.

33. Therefore, in light of this back ground, according to my opinion, Section 12, if it is properly considered and understood, then, authority within meaning of Section 12 must be Gujarat University and not College because course has been conducted by Gujarat University, Examinations are also conducted by Gujarat University and respondent No. 5 and 6 both are recognized by Gujarat University and stand which has been taken by respondent No. 3 and communicated to petitioner vide letter dated 29th August, 2009 that right from admission taken by students in the first year till last year of the college means till passing of examination, if the college is having recognition from Pharmacy Council of India, then alone, registration can be granted and that in case of petitioners, first year has been completed by petitioners in Divya Drashti Charitable Trust Diploma Pharmacy College, Bedia College which is not having recognition from Pharmacy Council of India and, therefore, even though JM Pandya Diploma Pharmacy College, Pipalia Pharmacy College is having PCI Recognition wherein petitioners have passed second year, registration cannot be granted to petitioners as per rules of Pharmacy Council of India and Pharmacy Act, 1948, such stand and answer is totally contrary to Section 12 of Pharmacy Act. Guidelines which have been relied upon by respondent No. 3 as referred to above page 65 which are annexed to affidavit in reply of respondent No. 3 dated 12th June, 2001 suggests that the Migration from one Pharmacy College to other is not a right of a student. It also suggests that however, migration of students from one pharmacy college to another pharmacy college in India may be considered. Both the colleges i.e. one at which student is studying at present and one, to which migration is sought, should be recognized by Pharmacy Council of India. Guidelines (c) suggests that total intake including transfer in an institution where migration/transfer is sought, shall not exceed 5% of sanctioned intake by PCI in a year and guideline (d) suggests that all applications for migration/transfer shall be referred to University/Examining Authority by the college Authorities and University/Examining Authority shall be authorized to approve transfer under intimation to PCI, based on the guidelines for migration/transfer framed by PCI. Thus, if these guidelines are considered in their proper perspective, then,

guideline (d) give power to University/Examining Authority to approve transfer / migration under intimation to Pharmacy Council of India and it is mandatory for concerned institution, i.e. the institution at which student is studying at present and one to which migration/transfer is done, to intimate about such transfer to PCI within one month of transfer. If these guidelines are considered properly, then, in present case, grant of NOC for transfer of petitioners from respondent No. 5 to respondent No. 6 itself suggests that respondent No. 5 college was considered to be approved college or recognized 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 and NOC has been given at the time of transferring petitioners from respondent No. 5 to respondent No. 6, therefore, petitioners were given admission being innocent students in respondent No. 5 and moment respondent No. 5 institution was closed, they were transferred to respondent No. 6 where they completed their studies and appeared in annual examination in both years and successfully completed and cleared examination in both years and successfully completed training which is required under provisions of Pharmacy Act, therefore, in Pharmacy Act, Section 12 is very much clear which is providing authority in a State which conducts course of study for pharmacist may apply to Central Council for approval of course. In this case, it is not the case of respondent No. 3 PCI that the course which was conducted by Gujarat University is not approved by respondent No. 3 PCI and examination conducted by Gujarat University is also not approved by PCI and so, petitioners have completed study of approved course and cleared examination which has been approved by PCI and, therefore, in peculiar facts and circumstances of present case and considering language of Section 12 of Pharmacy Act wherein word authority is employed by Legislature and since authority is not defined under Pharmacy Act, stand taken by respondent No. 3 is not just, reasonable, proper and according to law. Learned Advocate Mr. Chudasama for petitioners has relied upon decision of this Court in SCA No. 14795 of 2003 and allied matters annexed to this matter at annexure J, page 28 dated 29th November, 2003, in case of Chintan Narharibhai Shah v. State of Gujarat. Relevant discussion made by this Court from para 7 to 11 is quoted as under:

7. I have gone through the relevant provisions of the law. Further the learned advocate for the petitioners has made out a prima facie case in favour of the petitioners. The learned advocate for the respondent No. 4 - University has filed an affidavit wherein stand of the University in regard to make clarification pursuant to the court's order dated 13-10-2003 has been stated. The students who are already admitted upto the academic year 2002-2003 i.e. till the last year, and are studying at present may be allowed to complete their studies and for the said purpose, such students should be transferred and should be allotted to other colleges running the same course to which the present respondent No. 4 University has no objection if such alternative arrangement for absorption of the existing students is ordered by this Court. The authorities / respondents,

including Pharmacy Council of India, All India Council for Technical Education (AICTE), the Gujarat State Pharmacy Council and the State of Gujarat and all other concerned authorities shall also be agreeable for such an alternative arrangement which is proposed by the petitioners and to which the University has no objection in principle i.e. the transfer of existing students to such other institutions, which are recognized and affiliated to all the concerned authorities. It is also stated that the respondent No. 5 Trust running the institution should not be permitted to continue Pharmacy College. It is also stated that the fees and other expenses, which have been already charged from the students for the last academic year i.e. 2003-2004 by the respondent No. 5 Management should be ordered to be refunded back to the petitioners for the current academic term, so that the students can pay the said amount of fees to other college or Institute, where the students may be ordered to be transferred and absorbed. Thus, the proposal of the University is that the students who are admitted upto academic year 2002-2003 till the last year and are studying at present shall be allowed to complete their study and for the said purpose the students should be transferred and allowed colleges running the same course to which the University has no objection if such alternative arrangement for absorption of the existing students is made, the respondent No. 5 should not be permitted to continue the college and the undertaking must be obtained from the respondent No. 5 - Management of the college and fees and other expenses already charged from the students should be refunded back to the students for the current academic term so that the students can pay the amount to other colleges or institution where the students will be transferred or absorbed. The respondent No. 6 - Indian Institution of Technology has sent the affidavits to this Court to be filed in the petitions wherein it is stated that in the event, this Court prima facie considers that the petitioners have made out any case against the other respondents and desires that so far as said students are concerned who may not be blamed for what has transpired between them inter se with the other respondents with which II Ts are not concerned but with a view to see that the students do not ultimately suffer, the last date for receipt of the forms which was upto 30-10-2003, this Court may extend as a special case by another seven days i.e. upto 06-11-2003 and in that event the IITS should forthwith be informed to enable them to consider as a special case this extension of time only for the said students in whose favour the Court may pass an order not as a matter of right but as a matter of discretion and considering the welfare of the students.

8. The facts of the decision cited by the learned advocate for the respondent No. 3 are totally different with the facts and circumstances of the present case and prima facie the learned advocate for the respondent could not show any authority or any statutory provisions of law under which approval of the Institution is required under the provisions of Pharmacy Act. As such approval by the Pharmacy Council of India is not required for the Institution but the approval is required only for the course of study and the examination as appeared from the relevant provisions of the law which are already approved by Respondent No.

3 - Pharmacy Council of India. Moreover, it was also pointed out that all the students are undergoing studies of B. Pharm. in that respect it was pointed out from the letter dated NIL of the Pharmacy Council of India sent to the respondent No. 5 with reference to letter dated 13-09-2003, it is mentioned that with reference to the subject cited therein it is stated that the Pharmacy Council India does not prescribe the Minimum Educational Standard to qualify degree in pharmacy. As such Pharmacy course as prescribed is already approved by the Pharmacy Council of India though for that purpose minimum standard is not required for the B. Pharm course.

9. On behalf of the respondent a contention was raised that by way of interim relief the petitioners cannot be directed for transfer and admission in other institutions for prosecution of their study as allowing interim relief would amount to allow the petitions at this stage. No doubt ordinarily Courts should refrain to pass orders from such interim relief which amounts to allow the main relief of petition but facts of these petitions are such which require grant of interim relief at this stage otherwise the career of the petitioners students will ruin for no fault of their which cannot be compensated at all even in terms of money. Hence, the contention raised has no substance particularly the petitioners - students were admitted by the Central Admission Committee of Gujarat State to the Institution run by Respondent No. 5 - Trust for which affiliation was granted by the Gujarat University for the relevant year thereafter the affiliation was not withdrawn by the respondent - University and the Central Admission Committee continued to select and allot the concerned petitioners to the Institution run by Respondent No. 5 for admission. Thus, they prosecuted their study in the Institution duly affiliated by the respondent - University. Now the University is not permitting the Institution to continue the teaching to the students - petitioners hence, such order is necessary in the facts and circumstances of the case.

10. In view of fact that prima facie the students have undergone the approved course of study and cleared the approved examination hence, in the interest of justice, the petitioners should be directed to prosecute their further study. Accordingly Respondent No. 2 Central Admission Committee / State of Gujarat and the Gujarat University are hereby directed to transfer the petitioners - students to other colleges for undertaking further studies in the degree Pharmacy course in colleges which are duly approved by the competent authorities and the petitioners are permitted to appear in the examination to be conducted by the University for the purpose. The appropriate authorities/respondent authorities shall take steps for the compliance of the direction as per the rules and regulations. The learned advocate for the AICTE has no objection for enhancing capacity as to accommodate students in other colleges subject to NOC of the State Government and with such other conditions to be imposed by the University or the Institutions where the petitioners are directed to be admitted for the prosecution of their study. The NOC is to be issued by the State Government as per rules and regulations and other norms laid down therefore within two weeks from the presentation of a copy of this order. Regarding the

amount it is directed that the proportionate fees i.e. Rs. 2,500/= for free seats and Rs. 20,000/= for payment seats for the last semester of year be deposited in this Court within one month by Respondent No. 5 - Trust in view of the fact that the petitioners will have to undertake six months course of this year. If such amount is deposited by the Institution/Trust - respondent No. 6, this amount deposited in this Court would be subject to the orders of this Court. All the directions given above will be subject to outcome of all the aforesaid petitions.

11. Regarding the refund of the amount of fees already deposited in the Institution where the students were prosecuting their study, the learned advocate for the respondent Trust which is running the Institute filed the affidavit-in-reply and raised objection that respondent No. 5 cannot be directed to refund any amount regarding the study of the students as the University has only directed the Institution not to admit in the first year any students as such the Institution is entitled to run and continue the prosecution of the students' study. A Division Bench of this Court in L.P.A. No. 964 of 2003 vide order dated 25.09.2003 has already considered the deficiency of the Institution and in view of the fact that the Institution was granted affiliation for only one year 2000-2001, the contention raised by the learned Counsel for the Institution is not tenable.

34. Learned Advocate Mr. Dhaval Nanavati relied upon decision in case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., and Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, which have been considered by this Court and in light of facts and circumstances of case before hand, decisions cited by learned advocate Mr. Nanavati are not applicable.

35. In Agarwal Bhavna Suresh and Ors. v. Union of India and Ors. Division Bench of this Court reported in 2010 (2) GLH 685 considered case of medical students. After grant of admissions, medical college could not sustain the institution and its recognition was cancelled by Medical Council of India. In such circumstances, Division Bench of this Court observed in judgment keeping in view paramount consideration of saving career of students and further keeping in mind fact that such large number of students cannot be diverted to other medical colleges without creation of additional infrastructure which would jeopardize education of many more students already studying in other medical colleges. Division Bench of this Court, in such circumstances observed as under in para 9 of judgment:

9. We are guided by paramount consideration of saving the careers of the students who had been granted admissions in the said college by the Centralized Admission Committee at the time when the college was a recognized Medical College having been so recognized by the MCI. At the same time we are also conscious that these students in such a large numbers cannot be diverted at pre-M.B.B.S. stage to B.J. Medical College or N.H.L. Medical College without creation of additional infrastructure which would jeopardize education of many more brighter students already studying there.

35. Therefore, in light of aforesaid observations made by this Court as narrated above and considering pitiable condition of students means present petitioners who are sufferer for no fault on their part, who were initially allotted by Centralized Admission Committee to respondent No. 5 and then transferred to respondent No. 6 college and completed their studies while passing examinations successfully conducted by Gujarat University and also keeping in mind too much technical stand taken by respondent No. 3 Pharmacy Council of India and also considering future of such petitioners those who are found to be totally innocent who have undergone and completed their studies in Diploma in Pharmacy Course conducted by Gujarat University and recognized by Pharmacy Council of India and whose examinations were conducted by Gujarat University and each petitioner has successfully completed training program as per Pharmacy Act, 1948 and nothing remains to be done now by petitioners for getting registration as Pharmacist. The word authority employed in Section 12 of Pharmacy Act is not defined under said Act. Section 12 of Act suggests that any authority in a State which conducts a course of study for pharmacists may apply to Central Council for approval of course and Central Council, if satisfied, after such enquiry as it thinks fit to make, that said course is in conformity with Education Regulations, shall declare said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists. In case before hand, it is not the case of respondent No. 3 that the said course of study is not in conformity with the Education Regulations and it is also not the case of respondent No. 3 that the examinations conducted by Gujarat University in respect of petitioners is not in conformity with Education Regulation. Word authority used in Section 12 of Act is not defined. Section 12 suggests that authority which has to conduct approved course and also examination and these both things are related with Gujarat University in this case which has conducted approved course of Pharmacy in various Colleges in Gujarat State and which has also conducted examinations of approved course and also conducted training programme which has been approved by respondent No. 3 PCI and, therefore, word authority which has been used in Section 12 of Pharmacy Act cannot be understood as College or institution because course is to be approved by Pharmacy Council of India which has been conducted by Gujarat University in State of Gujarat and similarly examination of Diploma in Pharmacy is also conducted by Gujarat University. Petitioners were given admission through Centralized Admission Committee in a course of diploma in pharmacy recognized or approved by Pharmacy Council of India, conducted by Gujarat University. Therefore, stand taken by respondent No. 3 as submitted by learned advocate Mr. Nanavati for respondent No. 3, that respondent No. 5 is not approved u/s 12 and, therefore, petitioners cannot be registered as Pharmacists, cannot be accepted because there is no provision made in Section 12 of Act which would require recognition or approval of College/institution by Pharmacy Council of India. On the contrary, Section 12 suggests that the authority which has not been defined and it says that any authority in a State which conducts course of study for pharmacist may apply to Central Council for approval of course.

Therefore, such approval is not required to be obtained by any college/institution but authority which is conducting a course of study for pharmacist in a State and, therefore, respondent No. 5 is not the authority within meaning of Section 12 but Gujarat University is the authority within meaning of Section 12 of the Act and, therefore, technical stand taken by respondent No. 3 cannot be accepted by this Court because as stated earlier, Sub-section (1) and (2) of Section 12 of Pharmacy Act, 1948 clearly suggests that the course of study for pharmacist must have to be conducted by authority, not by College or institution. SO, combined reading of Section 12 (1) and (2) of Act suggests that authority in State which conducts course of studies for pharmacists may apply to Central Council for approval of the course which has been approved by Central Council for course of study for pharmacist. Therefore, college or institution conducting course of study for pharmacist has been approved by University and examination has also been held by university and, therefore, contentions raised by learned Advocate Mr. Nanavati on behalf of respondent No. 3 cannot be accepted. No such provision has been placed before this Court or shown to this Court by learned Advocate Mr. Nanavati which would require such prior approval by college where study of course of pharmacy has been taken up. In light of these facts, petitioners are entitled for registration as Pharmacist and, therefore, decision which has been taken by respondent No. 7 Gujarat State Pharmacy Council page 23 dated 29th August, 2009 in respect of petitioner in Special Civil Application No. 5728 of 2010 and impugned order dated 18.1.2010 in respect of petitioner in Special Civil Application No. 5729 of 2010 written by Additional Registrar Gujarat State Pharmacy Council, Ahmedabad is required to be quashed and set aside. In respect of petitioners in Special Civil Application No. 5730 of 2010 to 5732 of 2010, respondent No. 7 has not refused registration as Pharmacist by passing any specific order in respect of said petitioners but simply communicated copy of order dated 29th August, 2009 in respect of petitioner in special civil application No. 5728 of 2010 and thereby refused registration as Pharmacist in respect of those petitioners. Therefore, that action of respondent No. 7 is also required to be quashed and set aside with other consequential directions.

36. Accordingly, decision which has been taken by respondent No. 7 Gujarat State Pharmacy Council page 23 dated 29th August, 2009 in respect of petitioner in SCA No. 5728 of 2010 and order dated 18.1.2010 in respect of petitioner in Special Civil Application No. 5729 of 2010 as well as action of respondent No. 7 to refuse registration as Pharmacist in respect of each petitioner in these petitions is hereby quashed and set aside with a direction to Gujarat State Pharmacy Council, Ahmedabad, respondent No. 7 herein and respondent No. 3 Pharmacy Council of India to register each petitioner as pharmacist in Central Register as required u/s 15A and 15B of Pharmacy Act, 1948 within period of two months from the date of receiving copy of present order and accordingly communicate the same to petitioners immediately and without any delay. Rule is made absolute in each petition accordingly with no order as to costs.