
(1998) 12 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6038 of 1998

Khetri Vikas Samiti

APPELLANT

Vs

University of Rajasthan and Another

RESPONDENT

Date of Decision : 04-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1999 Raj 269 : (1999) 3 WLC 337

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; A.K. Sharma and Bharat Vyas, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner Khetri Vikas Samiti a registered society, had set up a Pharmacy College known as Sanjeevani College of Pharmaceutical Sciences. Khetri (hereinafter called as the College) for conducting Bachelor of Pharmacy and Diploma of Pharmacy Courses. The petitioner is aggrieved against the order Annexure-13 whereby the University of Rajasthan, respondent No. 1 had issued a letter dated 20-11-1998 extending/ awarding provisional affiliation in favour of number of institutions (about nine) for the sessions mentioned against each of such institutions but not taking any decision so far the institution of the petitioner college is concerned. A prayer has been made that because of the reason that the action of the respondent No. 2. in withholding the extension of the affiliation of the petitioner college by the impugned order Annexure-13 be declared illegal, invalid and unconstitutional, who had held the Entrance Test for admission of the students in various institutions/colleges. A further direction is sought to take an appropriate decision regarding extension of af filiation of the aforesaid college in the light of the affiliation/recognition having been granted by the All India Council for Technical Education (for short AICTE) vide orders dated 22-5-1997 and 11-8-1998 and the respondents be directed to consider and

finalise the allotment of the seats to the students by including the petitioner college in the list for allocation of seats.

2. Under the All India Council for Technical Education Act, 1987 (hereinafter called as the Act) the Council has been established u/s 3 by the Central Government with its Head Office at Delhi. The Constitution of the Council has been provided u/s 3(4) of the Act which also includes Pharmacy Council of India as one of its constituents. The Act has been promulgated with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith,

3. Powers and functions of the Council has been provided u/s 10 which includes to

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education :

(b)

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to--

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission :

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes :

(e) to (g).....

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers :

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations:

(u) fix norms and guidelines for charging tuition and other fees :"

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned :

(1) advice the Central Government in respect of grant of charter to any

professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates:

(m) and (n).....

(o) provided guidelines for admission of students to technical institutions and Universities imparting technical education :

(p) inspect or cause to inspect any technical institution :

4. Section 11 empowers the Council to cause inspection of any department or departments of such technical institutions or University in the manner as may be prescribed.

5. Chapter IV of the Act deals with the Formation of the Executive Council and Chapter V incorporates the Finance. Accounts and Audit of the Council. Sections 22 and 23 enable the council to make rules and regulations which had to be led before the Parliament. The Council has also framed the regulations vide notification dated 20-5-1994 fixing norms and guidelines for discharging its duties and providing guidelines for admission of the students in the professional colleges called the All India Council for Technical Education (Norms and guidelines for fees and guidelines for admissions in professional colleges) Regulations, 1994. The regulations have been made applicable to the professional colleges imparting diploma, degree or equivalent courses in Engineering and other subjects including the Pharmacy. The competent authority has been defined a Government or University or any other authority as may be designated by the Government or the University or by law to allot students for admissions to various professional colleges in a State or Union territory. Regulation 4 provides that no individual firm, company or other body shall be permitted to establish a professional college unless the council grants approval for establishment of a professional college to the society registered under the Societies Registration Act. Power has been given to the Council under Regulation 4 (3) of the Regulations to cancel the registration. Sub-clause (4) of Regulation 4 provides that no professional college shall be established or a new technical education course or programme started without the approval of the Council. Regulation 5 provides the number of seats for admission available in a professional college shall be fixed by the Council and no professional college shall be permitted to change (he intake capacity. Regulation 8 provides for allotment of seats mentioning that all applications for admission to all seats available in such college shall be called by the competent authority. The admissions are to be made on the basis of entrance test. Regulation 13 provides that the Council shall communicate to the competent authority for each State the name of approved professional colleges and the names of the courses or programmes and number of seats of each course or programmes fixed by the council. The relevant provisions of the Regulations are reproduced as under :--

"1. Short title and commencement :-- (1) These regulations may be called the

All India Council for Technical Education (norms and guidelines for fees and guidelines for admissions in professional colleges) Regulations. 1994.

3. Definition -- In these regulations, unless the context otherwise.

(b) "Competent authority" means a Government or a University or any other authority as may be designated by the Government or the University or by law to allot students for admissions to various professional colleges in a State or Union territory :

4(2). The Council shall grant approval for establishment or administration of a professional college only by a society registered under the Societies Registration Act, 1860 (21 of 1860), the Trusts Act, 1882 (2 of 1882), the Wakf Act, 1954 (29 of 1954), or under a corresponding law, if any, in force in a State.

(3) The council shall cancel the registration of or as the case may be withdraw the approval granted to a professional college established before the commencement of these regulations if that college does not conform to the conditions stipulated under this regulation on or before the 31st day of March 1995.

(4) No professional college shall be established or a new technical education course or programme started without the approval of the Council.

5. Admission :--(1) The number of seats for admission available in a professional college shall be fixed by the Council and no professional college shall be permitted to change the intake capacity except by the approval granted by the council.

8. Procedure for allotment of seats -- (1) No professional college shall call for applications for admission separately or individually. All applications for admissions to all the seats available in such college shall be called for by the competent authority. The application forms for admission shall be issued by the competent authority which shall contain a column wherein an applicant shall indicate whether he or she wishes to be admitted against a free seat or a payment seat, or both and the order of preference, up to three professional colleges.

13. Every year in the month of December, the Council shall communicate to the competent authority for each State the name of approved professional colleges, the names of the courses or programmes and number of seats for each course or programme fixed by the Council for making admissions for every academic year. Thereupon the competent authority shall proceed with inviting of applications for such professional colleges and number of seats for the courses or programmes only and for making admissions thereto.

6. In pursuance and as per the requirement the petitioner college had applied for approval and affiliation to the University as well to the Council. Vide Annexure-2, the petitioner was allowed to intake 40 students for B-Pharma and 60 students

for D-Pharma w.e.f. the session 1996-97 as provisional affiliation. The University in its letter Annexure-2 had mentioned that the provisional affiliation for the Session 1996-97 had been granted to the college on the terms and conditions :

1. The intake will be 40 students for B. Pharma (one class) and 60 students for D. Pharma (one class) each year w.e.f. 1996-97 session.

2. At the end of the session, there will again be an inspection specially in the context of compliance and fulfilment of the deficiencies if any :

3. The NOC from the State Government is not "required as per notification of the AICTE, however the approval/permission from the AICTE may be obtained.

4. The allotment of students shall be made by the examination conducting concerned University.

5. The fees structure will be as per the norms of AICTE.

7. As per condition No. 3. the petitioner was specifically told that even though the approval of the State Government is not required, but still the approval/permission from the AICTE shall have to be obtained. Another communication in this regard as issued by the University of Rajasthan to the petitioner has also been attached as Annexure-3.

8. The State of Rajasthan vide its letter dated 20-5-1997 had also approved the institution on the college, it is stated by the petitioner that because of the reason that the approval/permission from AICTE had not yet been received, therefore, the college could not be made functional. It was vide Annexure-5 dated 20-5-1998 that the AICTE had approved the institution of the petitioner for admission to the seats i.e. D. Pharma 60 seats and B. Pharma 40 seats for the session 1998-99. It was mentioned therein that the approval is only for one academic session and at the end of the session the Committee was to visit the institution and to assess the normal standard as stipulated by AICTE and on finding the institution to be in order, the continuation was to be initiated after the end of the session of 1998-99. The petitioner was also informed vide Annexure-6 by the Government of Rajasthan, Department of Director of Technical Education about the norms and fee to be charged from the students as per its letter dated 11-8-1998.

9. Being strengthened by the letters Annexures 2 and 5 and Annex. 4. the petitioner moved the Registrar University of Rajasthan for granting, extending the provisional affiliation. Along with the letters Annexures 7 and 8 required fee was also deposited. Copies of the letters of approval from the Government of Rajasthan and AICTE are also attached as Annexures 5 and 6. The results of B. Pharma were declared sometime in November 1998.

10. However, the University of Rajasthan. Jaipur vide Annexure-12 dated 7-9-1998 had informed the respondent No. 2 who was holding the entrance test for allocating the seats to the colleges as per merit. The fact that because of non-

receipt of the approval from the State of Rajasthan as many as 10 colleges including the petitioner's college could not be extended the provisional affiliation from the years mentioned therein the letter Annexure-12. Colleges namely; B. N. College, Udaipur, Lachhu Memorial College of Science and Technology, Jodhpur, Baba Mungiya College of Pharmacy, Pilani. Lal Bahadur Shastri College, Jaipur, Maharishi Arvind College of Pharmacy, Jaipur, Nehru Memorial College of Pharmacy, Hanumangarh and Maharaja Surajmal College of Pharmacy. Bharatpur were not entitled to the extension from the session 1995-96 whereas the colleges namely Bajrang College of Pharmacy. Ueeg and Sanjeevani College of Pharmacy. Khetri, petitioner college, were held not to be entitled to the extension from the session 1997-98 and the college Paramanand Degree College. Gajsinghpura and Bajrang College of Pharmacy. Deeg i.e. nine colleges out of 10 colleges in Annexure-12 who were not granted extension for the reason that the Government approval had not been received. However all of them had been granted the extension vide Annexure- 13 and the college of the petitioner had been left out.

11. It is very clear that the college of the petitioner was not being granted the extension/ affiliation by the University only on the ground that the Government had not approved the college as yet. This observation in Annexure-12 dated 10-10-1998 was on the face of it not correct as per record. The petitioner has attached letter Annex-ure-4 dated 22-5-1997 issued by the State of Rajasthan whereby the approval had been granted, which is also confirmed vide Annexure-6 when the college of the petitioner was also informed by the State about the norms of the fees to be charged. This fact was also known to the University when the applications Annexure-7 and 8 were made whereby the petitioner had attached along with the application the copies of the orders passed by the Government as well AICTE i.e. No Objection Certificate by the Government of Rajasthan and approval by AICTE and still despite the record being otherwise, the respondent No. 1 without application of mind had observed that the approval/affiliation is not being extended only on the ground that the Government has not so far approved the college of the petitioner, which fact was on the face of it a wrong fact noted by the University for the reason best known to it and it was a case of total non-application of mind on the record itself.

12. The University had vide Annexure-13 accorded the provisional extension with retrospective date to all the colleges with effect from the session 1995-96, except two of them appearing at Sr. No. 2 Lachhu Memorial College of Science and Technology, Jodhpur which was granted approval for 1996-97 and Parmanand Degree College, Gajsinghpura from 1998-99. What does it mean. Many of the colleges were not definitely affiliated provisionally right from 1995 onwards and, therefore, impliedly were in the similar situation as that of the petitioner. The University granted the affiliation retrospectively to as many as 8 colleges.

13. Counsel for the petitioner submits that in case retrospective affiliation was

being granted to number of colleges, the petitioners case could not have been isolated and discriminated against or alternatively submits that the other colleges who had been granted retrospective affiliation, should not have been granted such retrospective affiliation. I will not go into the aspect whether the retrospective affiliation is permissible under the University Statutes or Ordinances or not as that is not the point challenged before me for quashing any such retrospective affiliation to any other college.

14. Now from the above facts, it is very clear that no decision was taken in the case of the present petitioner in Annexure-13 for the reason stated in Annexure-12 that the approval of the Government was not forthcoming. This objection in Annexure-12 is not understandable for the reasons:

(1) In Annexure-2 the University of Rajasthan itself had observed that no approval of the Government is required for affiliation by the University :

(2) the approval of the Government had very much been granted vide Annexure-4 :

(3) the approval by the Government and also by AICTE had been attached by the petitioner with the application for extension of the provisional affiliation which was moved by the petitioner in the last week of August:

(4) all the record regarding approval by the Government, assuming to be required was available with the University of Rajasthan, but still Annexure-12 so far the case of the petitioner-college is concerned, depicted certain other picture.

15. The matter can also be viewed from another angle i.e. in Annexure-2 it is very clear that the approval had been given as per Clause (1) of me conditions as reproduced above as well with intake of 40 students for B. Pharma and 60 students for D. Pharma each shall be w.e.f. 1996-97 session, and in condition No. 2 it is mentioned that there would be inspection in the context of compliance and fulfilment of the deficiencies, if any, at the end of the session. It does mean that after 1996-97 the permission of intake students was to continue subject to inspection. It cannot be said that the approval itself was to last up to 1996-97 as there was condition of continuing the same. Another condition mentioned in Annexure-2 was that it was mandatory for the petitioner to take the permission from AICTE which was granted only in May 1998 vide Annexure-5 and the University having been so informed vide Annexures-7 and 8, there was no alternative with the University but to treat the petitioner like any other institution or college for whom the affiliation has been granted.

16. The scheme of the Act of 1987 is that it is the Council who is to grant approval for starting new technical institution and for introduction of new course or programmes in consultation with the agency concerned as per Section 3 of the Act. It is the AICTE which has been empowered to grant approval and for granting such approval the AICTE is to form the Committee for the purpose of inspection and the functions of the institutions and also for the purpose of

supplementing its functions the assistance of the University is to be taken for the purpose of affiliation for conducting the examination and the respondent No. 2 is an agency to conduct the examination and sent the merit (list) to AICTE for allocating the seats to the approved institutions. The respondent No. 2 is to act only as a conduit in between the AICTE and the University of Rajasthan.

17. In the written statement filed by the University, the only defence being taken is that after the year 1996-97 there was to be an inspection for fulfilling the deficiencies but for the reason that no admissions had been granted in the institution for the year 1996-97, the extension application was to be scrutinized by the respondent No. 1 as a fresh application. It is further submitted that the petitioner had applied vide Annexures-7 and 8 at a very late stage i.e. in the month of August and, therefore, no decision was taken or could have been taken and the matter was still pending when the petitioner had filed the writ petition. The petitioner has also placed on record a letter issued by the University on 30-11-1998 to the effect that the matter for grant of provisional fresh affiliation is under consideration, even though in the reply filed by the respondent No. 1 it has been categorically stated that the petitioner is not entitled to any affiliation. No reasons have been given as to why the petitioner was not entitled to the affiliation in the same manner as the affiliation was extended in number of cases from retrospective effect from the session 1995-96 onwards.

18. Record was called in the present case. On the record of the University, the application of the petitioner for extension for the session 1997-98 onwards is available and along with the application photo-slat copies of the orders of approval by the Government, by AICTE and also previous approval of the University of Rajasthan, copy of which is also attached with the writ petition as Annexure-2, had been attached. The file does contain the copies of the documents as now attached as Annexures-2, 4 and 5.

19. On the file there is another letter issued by the Joint Director, Technical Education, Government of Rajasthan, Jodhpur to the Vice-Chancellor, Maharishi Dayanand Saraswati University, Ajmer, mentioning therein that the Council had approved certain institutions for B. Pharma and D. Pharma admissions. The name of the petitioner appears at Sr. No. 3 for B. Pharma and at ST. No. 10 for D. Pharma for the session 1998-99, the relevant portion of which reads as under :-

Sir,

The list of the institutions recognised by the All India Technical Education Council for D. Pharma and B. Pharma are as under :--

B. Pharma The year for approval from AITEC 1. 2. 3. Sanjeevani College of Pharmacy, Khetri 1998-99 D. Pharma The year for approval from AITEC 1. 10. Sanjeevani College of 1998-99 Pharmacy, Khetri, Rajasthan. (English Translation)

20. The respondent No. 2 had also written a letter to the respondent No. 1

on 31-8-1998 to the effect that All India Council had granted approval for admission for the seats D. Pharma and B. Pharma vide letter No. 872 where the name of the petitioner-college appears at Sr. No. 11. Even the Government by letter dated 8-10-1998 in the Department of Technical Education has written to the respondent No. 1 the fact that the examinations for the year 1998 have since been accomplished, but because of non-availability of the name of the institutions even though the institution stands approved by the All India Council the difficulty is being felt and, therefore, requests had been made to the University to publish the name of the institutions approved. Reminders were also being sent and it seems that the University, respondent No. 1 while dealing with the case of granting/extending the provisional affiliation had observed a note 47 that the orders of approval had been collected/obtained personally from the office of the Technical Education, Government of Rajasthan, in regard to nine colleges as mentioned in Annexure-13, but it is stated that the case of the petitioner is being considered separately for granting fresh affiliation. But on the file there does not appear to be any order for dealing the case of the petitioner except the last order Annexure-13.

21. After going through the facts, pleadings and also the record produced, I am of the opinion that the college of the petitioner has been discriminated against and even not deciding the case of the petitioner when the cases of all other colleges have been decided by collecting information's personally from the office of the Technical Education, Rajasthan was arbitrary. Admittedly, in all other cases, the extension has been granted with retrospective effect. It is implied that if there was no affiliation, college could not become functional. But in the present case for the reason that the approval of the Council was received in the month of May 1998 vide Annexure-5, the approval already granted by way of affiliation vide Annexure-2 was to be made applicable to the case of the petitioner. The Government had also approved the institution of the petitioner in the similar way as other nine institutions were approved as mentioned in Annexure-13. The case of the petitioner stood equally approved by AICTE and the Government after deposit of the required fee. All the cases were being dealt with simultaneously on the file but to say that the case of the petitioner shall be treated separately from the others case was not proper. The respondent No. 1 ought to have dealt with the case of the petitioner immediately along with the consideration of the cases of other institutions. The petitioner does fulfil all the qualifications as required. The University of Rajasthan is to affiliate for the purpose of granting the degrees. The main approval is by the AICTE who is responsible for the complete functions of the institutions. It is AICTE who can withdraw the approval as per the provisions of the Act and the Regulations framed thereunder. The University has been associated for the purpose of affiliation for holding the examinations and may be for granting the degrees on the examinations having been held. Present is definitely a case where the proper decision ought to have been taken in the same manner as was taken in the cases of other institutions. Nothing has been brought on record even by the University against the petitioner. Even after going

through the files produced by the respondents, I do not find a single word against the present institution as to disentitle it for non-consideration for extension of the affiliation. In Annexure-13, it is very clear that as many as nine institutions were affiliated retrospectively which stood approved by the Council and Government so was the case of the institution of the petitioner as well and it could not have discriminated against.

22. From the record as produced, it is revealed that the matter was being dealt with in regard to other institutions and the mention of the present writ petitioner has also been found in the record itself, but the officer dealing with the case has separated the case of the petitioner while giving provisional affiliation to all other institutions. All other institutions have been awarded the provisional affiliation on the basis of their having been approved by the Government and also from the AICTE, so was the case in regard to the petitioner as well. Nothing against has been brought on record to show except that the application of the petitioner was filed late in the month of August. Even the ground of delay of submission of the renewal or extension of affiliation by the petitioner cannot be pleaded by the respondent-University for the reason that the case of the petitioner was being dealt with along with all other institutions. The record and the formalities had been completed by the petitioner. In such situation the defence of respondent No. 1 for the delayed application of the petitioner has no ground and has no reason to be accepted.

23. The counsel for the respondent has brought to the notice a judgment of this Court in Civil Writ Petition No. 6917/97, Mahesh Jhaharia and Others Vs. State of Rajasthan and Others, which judgment also related to the permission to be granted to the students admitted in Baba Mungiappa College of Pharmacy. That was a case where despite no approval having been granted to Baba Mungiappa College of Pharmacy by the Council or when such permission was withdrawn later on, the fate of the students was jeopardised. A direction was given by the Court that the students of the Baba Mungiappa College of Pharmacy be allowed to appear in the examination. This authority has no relevancy to the facts of the present case. Similarly counsel for the petitioner also relies on a judgment reported in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,

24. For the reasons that the abovesaid writ petition is being allowed on a different ground, there is hardly any necessity or bearing of State of T. N. v. Adhiyaman Educational and Research Institute (supra) on the present case.

25. Counsel for the petitioner submits that the writ petition can be allowed on other points as well in regard to competency of the University about the provision of extension of affiliation or the fact that once the affiliation had been granted, that was to continue for minimum period of five years. For the reason that the writ petition is being allowed on the grounds mentioned above, there is hardly any necessity to go into all other aspects having been argued by the counsel for the petitioner.

26. It has been brought to the notice of the Court by the learned counsel Shri Bharat Vyas that the interviews of the students for allocation of the seats are going to be held from 5-12-1998 up to 8-12-1998 and so far the respondent No. 2 was contemplating for allocating the seats only to the institutions which stood provisionally affiliated by the respondent No. 1 vide Annexure-13 and number of students being called for interviews were equal to the number of seats as provided and applicable to those nine institutions. In the circumstances, it shall be appropriate that the respondent No. 2 be directed to include the number of seats which had been permitted for intake by the AICTE i.e. 40 seats for B.Pharm and 60 seats for D. Pharm as per Annexure-5 and shall take action accordingly pending the formal order of affiliation to be passed by respondent No. 1.

27. For the reasons mentioned above, there is no escape but to allow the writ petition with a direction to the respondent to consider to include the case of the petitioner for affiliation in the same manner as has been done in the cases of other institutions as mentioned in Annexure-13 and the writ petition stands allowed with the direction that as per the list submitted by the Council whereby the name of the petitioner-institution already stands included for the purpose of admission of the students, the required action be taken by the respondent No. 1 forthwith and the allocation of the seats shall be made by the competent authority i.e. respondent No. 2 without any discrimination to the petitioner vis-a-vis other institutions.