

**(2014) 10 KL CK 0134**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 24770 of 2014 (U)

K.J. Abraham

APPELLANT

Vs

All India Technical Education Council

RESPONDENT

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**Date of Decision :** 24-10-2014

**Acts Referred:**

**Citation :** (2014) 10 KL CK 0134

**Hon'ble Judges :** K. Vinod Chandran, J

**Bench :** Single Bench

**Advocate :** N.N. Sugunapalan (Sr.), S. Sujin, Kurian George Kannanthanam (Sr.) and Justin Mathew, Advocate for the Appellant; S. Krishnamurthy, SC, AICTE, P. Sreekumar, SC, Kerala Uty.Health, Advs, and R. Ranjith, Government Pleader, Advocate for the Respondent

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## **Judgement**

K. Vinod Chandran, J.

1. The petitioner is aggrieved by Ext.P7 order of the respondent University, rejecting the request for provisional affiliation of a new Pharmacy course, intended to be commenced by the petitioner herein. The brief facts to be noticed are that the petitioner had initially obtained a consent of affiliation, from the respondent University, by Ext.P4 dated 30.01.2014. Immediately thereafter, the State Government issued a No Objection Certificate, Ext.P1 dated 13.02.2014. The All India Council for Technical Education (AICTE) also granted its approval to the course, by Ext.P2 dated 10.06.2014.

2. It is an admitted fact that the above documents were forwarded to the University and the University was awaiting the approval of the Pharmacy Council of India (PCI); which was a pre-condition for affiliation as is seen from Ext.P4. The petitioner also did not urge the consideration of application for affiliation, before the University, only because the petitioner had not received an approval from the PCI. That was received by Ext.P3 dated 09.09.2014, upon which, the University considered the application and rejected the same by Ext.P7.

3. Ext.P7 was a rejection on account of Ext.P3 approval of the PCI being only a provisional one. The recommendation of the executive committee had to be placed before the Central Council for ratification and in such circumstance, the University was of the opinion that no affiliation could be granted; without the formal approval of the Central Council of the PCI.

4. The first contention advanced by the learned Senior Counsel, appearing for the petitioner, is that, there is no requirement for an approval from the PCI for conducting a course in Pharmacy. The approval would have to be obtained only for the purpose of registering the students, who qualified in the course, as Pharmacists. The approval of the course by the PCI would be a requirement, only for such registration and not otherwise is the contention.

5. The approval of the course as such has to be done by the Apex Body, AICTE. The learned Senior Counsel would specifically refer to Chapter IV of the Pharmacy Council Act, 1948, (for brevity, "the PCI Act") which deals with registration of Pharmacists. Section 29 of the PC Act speaks of the State Government preparing a register of Pharmacists for the State, which is to be maintained by the State Council. Section 30 of the PC Act is with respect to the preparation of the first register and Section 31 of the PCI Act deals with qualifications for entry in the first register.

6. The specific contention urged by the learned Senior Counsel is that, for commencing the course, there is no requirement of an approval from the PCI. Approval is contemplated only after the course is commenced, so as to recognize the course and examination conducted, leading to a degree in Pharmacy, to be one satisfying the minimum standard of education, as prescribed by the education regulations brought in by the PCI under the PC Act. Hence, the approval from PCI is not a pre-condition for commencing the course. No such approval could be granted before commencement of the course, since the approval is to the course and examination, which has to be on a verification of the course content and the standard of examinations after the commencement of the course, urges the petitioner herein.

7. The learned Standing Counsel for the University however, would raise two contentions against consideration of affiliation, sought for in the present writ petition. The Hon''ble Supreme Court in Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others, , specifies the period prescribed for admission, which is long over. It is also submitted that the present contention raised by the petitioner, is an after thought, insofar as the consent of affiliation issued by the University specifically indicated that the approval from the PCI would have to be obtained.

8. The learned Senior Counsel however would point out the special circumstances that existed in 2014 to urge, that the date for admission should be deemed to have been extended, by virtue of the interim orders of the Hon''ble Supreme Court itself. Subsequent to the aforesaid judgment, the Hon''ble Supreme Court,

in Association of Management of Private Colleges Vs. All India Council for Technical Education and Others, found inter alia that the affiliated colleges of a University does not come within the ambit of the AICTE and in such circumstance, the AICTE had discontinued the practice of granting approvals. A review petition was also filed by the AICTE, which is said to have been dismissed.

9. It is an admitted fact that the decision in Association of Management of Private Colleges (supra) has been referred to a larger Bench, by another Bench of the Hon''ble Supreme Court, doubting the proposition laid down in that decision. In that context, there was uncertainty insofar as who would grant approval for the professional courses, for the present. The said issue was settled by an interim order of the Hon''ble Supreme Court produced at Ext.P10. In a special leave to appeal filed by an Association of technical colleges, from the State of Orissa, the Hon''ble Supreme Court directed AICTE to proceed in accordance with the approval process, for the academic year 2014-15. Insofar as the members of the petitioner association and colleges in such institution similar to the members of the petitioner association are concerned. The AICTE was also directed to issue orders within a period of 10 days. The directions in Ext.P10 being impossible of compliance within the time stipulated; the AICTE was before the Hon''ble Supreme Court with an application in which time was extended till 10.06.2014. It is the approval pursuant to such directions issued by the Hon''ble Supreme Court that is produced herein, as Ext.P2 by the petitioner.

10. Looking at the dates prescribed in the Parshvanth Charitable Trust and others (supra), the last date for granting or refusing the approval by the AICTE, was 10.04.2014, which stood extended to 10.06.2014 by the interim orders issued by the Hon''ble Supreme Court. Even then, that was before the last date prescribed for admission of students, which fell on 30th July as per the decision in Parshvanth Charitable Trust and others (supra). It is an admitted fact that the petitioner did not move for expeditious consideration of the affiliation on the strength of the approval granted by the AICTE on 10.06.2014. The petitioner too was under the impression that the approval of the PCI was required for finalization of approval. That was also a condition in the consent of affiliation granted by the University. The petitioner woke up to its rights only after the date prescribed for admissions was over.

11. True the cause of action arose only by virtue of Ext.P7 order, rejecting the affiliation for the present academic year, on the ground that the approval of the PCI was only provisional and not final. The learned Senior Counsel would urge that in any event that decision may be set aside but, however this Court is of the opinion that would lead to issuance of a futile writ since in any event no admissions could be made this year. The issue whether PCI's approval is required before the course is commenced and for processing the affiliation by a University; does not arise in the present case for reason only of the fact that the date for admission prescribed by Parshvanth Charitable Trust and others (supra) is over. This Court hence would desist consciously from deciding the issue and

leave the question open in a case where the same would be relevant. 12. It is also to be noticed that the petitioner was issued with a consent of affiliation as early as on 31.01.2014 by the University, making it a specific condition that the approval for conduct of the course study, from the PCI, is required and only after obtaining the same, the University would permit the course in B-Pharm to be commenced. The petitioner obviously did not challenge the same. Whether it be or a misapprehension or not, the same is not open for challenge at this point. The present case would not require an authoritative pronouncement on this Court; and it is best left to be considered in a fit case, where it arises for consideration.

The writ petition is dismissed for reason of the date prescribed for the last admissions being over, by the time the instant writ petition was filed. The question regarding approval of PCI would be left open. The parties are left to suffer their respective costs.