

(2007) 03 DEL CK 0272

In the Delhi High Court

Case No : WP (C) No's. 23665-68 of 2005

Maresh Kumar and Others

APPELLANT

Vs

Directorate of Education and Others

RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Education Regulations, 1991 — Regulation 10, 11, 12, 13, 18
Pharmacy Act, 1948 — Section 12, 12(1), 12(2), 12(3), 2
University Grants Commission Act, 1956 — Section 3

Citation : (2007) 140 DLT 509 : (2007) 96 DRJ 589

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sanjeev Narula, for the Appellant; Himanshu Upadhyay and Jogya Scaria, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners are the students of R.R. College of Pharmacy, respondent No. 3, and they have sought that Directorate of Distance Education, Institute of Advance Studies in Education, respondent No. 1, be approved by Pharmacy Council of India as the examination authority and direct respondent No. 1 to conduct the examination of the petitioners.

2. According to the petitioners, respondent No. 1 is Deemed University recognized by Ministry of Human Resource Development vide notification dated 25th June, 2002, Ministry of Human Resource Development, Department of Secondary and Higher Education in exercise of power conferred u/s 3 of University Grants Commission Act, 1956 declared Institute of Advance Studies in Education of Gandhi Vidya Mandir, Sardarshahar, Rajasthan as a Deemed University. By notification dated 17th July, 2003, respondent No. 1 was deemed to be a University with effect from 25th June, 2002. Respondent No. 1 was conferred the status of Deemed University u/s 3 of the University Grants Commission Act, 1956. Section 3 of the University Grants Commission Act, 1956

is as under:

3. Application of Act to Institutions for higher studies other than Universities:- The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University shall be deemed to be a University for the purpose of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of Clause (f) of Section 2.

3. The petitioners contended that respondent No. 1 is the examination authority of respondent No. 3 in which petitioners are pursuing their diploma course. Respondent No. 1 was also stated to be an examination authority of Marwar College of Pharmacy, Maulasar(Didwana), Nagour, Rajasthan.

4. R.R. College of Pharmacy, respondent No. 3, according to petitioners conducts two years" Diploma in Pharmacy (D Pharma Course). Respondent No. 3 was affiliated to University of Technology and Science, Raipur. The petitioners took admission in respondent No. 3 for Diploma in Pharmacy and the classes of the petitioners started from August 2004 for the course of 2004-2005.

5. The petitioners, who are the students of respondent No. 3, asserted that the college applied to Pharmacy Council of India with standard inspection form along with a bank draft of Rs 15,000/- with examination authority letter for approval of the course of study or recognition and approval of examination authority. Relying on letters dated 15th January, 2004 and 4th February, 2005 of Pharmacy Council of India, it was contended that when an institute is starting for first time course of study approval or recognition of institute is not mandatory for diploma in Pharmacy (D-Pharma) as the said course is different from other courses and for the said course recognition is not required before commencement of the course.

6. By letter dated 4th February, 2005, the Pharmacy Council of India had intimated the College, respondent No. 3 that at appropriate time inspection of D pharma course shall be conducted. The relevant extract of letter dated 4th February, 2005 of Pharmacy Council of India is as under:

The Pharmacy Council of India (PCI) shall at the appropriate time conduct inspection of D. Pharma course for granting approval of the D. Pharma course u/s 12 of the Pharmacy Act, 1948 for the purpose of registration as a pharmacist. It will be the responsibility of the institution to obtain the approval of the Pharmacy Council of India u/s 12 of the Pharmacy Act before the first batch of students pass out from the institution.

7. The Apex Court in a matter reported as Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, ., had de-recognized University of Technology and Science, Raipur and, Therefore, the Pharmacy Council of India asked the college to obtain no objection certificate/consent from an examination authority. While de-recognizing University of Technology and Science, Raipur, the Apex Court had

also held:-

In order to protect the interests of the students who may be actually studying in the institutions established by such private universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students.

8. The college, respondent No. 3, conducted two sessional examination of petitioners in the months of January and April, 2005 and courses and practical of petitioners were also completed by respondent No. 3. Respondent No. 3 College also stated to have got affiliation from respondent No. 1, deemed university, which also issued a no-objection for conducting the examination of petitioners from Respondent No. 3 and consequently the college sought approval of examination authority from the Pharmacy Council of India and also sought grant of permission to respondent No. 1 to conduct the examination.

9. Since, the Pharmacy Council of India failed to grant approval to examination authority, respondent No. 1, petitioners contended that final year examination has already been delayed by five and a half months and if examination of the petitioners is further delayed, whole fruitful year of petitioners will be wasted. Consequently, petitioners has filed the present writ petition seeking direction to respondent No. 2 to approve respondent No. 1 as the examination authority of respondent No. 3 on the grounds inter alias that respondent No. 1 is an appropriate examination authority according to Appendix "C" of Education Regulation, 1991 for Diploma Course of Pharmacy Council of India and definition of Indian University in Section 2(e) of Pharmacy Act, 1948. Relevant portion of Appendix "C" of Education Regulation, 1991 is as under:

1. The Examining Authority shall be either a statutory Indian University or a body constituted by Central or State Government. It shall ensure that discipline and decorum of the examinations are strictly observed at the examination centres.

10. "Indian University" has been defined in Section 2(e) of The Pharmacy Act, 1948 as follows:

Indian University means University within the meaning of Section 3 of University Grants Commission Act, 1956 (3 of 1956) and includes such other institutions, being institutions established by or under a Central Act, as the Central Government may, by a notification in the Official Gazette, specify in this behalf.

11. The petitioners also relied on the fact that respondent No. 1 is already an examination authority of Marwar College of Pharmacy, Maulaudsar(Didwana), Nagour, Rajasthan and consequently there cannot be any prohibition in appointing respondent No. 1 as the examination authority and specially since respondent No. 1 has given no objection to the respondent No. 3 to conduct examination of the petitioners on 1st June, 2005.

12. The Pharmacy Council of India, respondent No. 2, has contested the petition

contending that the petition is totally misconceived. It was stated by respondent No. 2 that on 15th January, 2004, standard procedure for seeking approval of D Pharma course was forwarded to the college. The college was asked to fulfill the requirements of Education Regulations, 1991 and they had to submit application proforma evidencing creation of prescribed facilities and stipulate documents by 30th September, 2004, if approval was required for the academic session 2005-2006. Instead of complying with the terms of the Pharmacy Council of India, respondent No. 3 admitted students for 2004-05 and thereafter forwarded application to the answering respondent on 30th September, 2004 i.e. after the students were admitted. According to respondent No. 2 consent of a valid examination authority was a pre-requisite for consideration of an application under the Pharmacy Act and the examination authority also had to comply with the conditions laid down under Appendix "C" of Education Regulations, 1991 for approval u/s 12(2) of the Pharmacy Act for the conduct of the examination.

13. The respondent No. 3 is situated in Uttar Pradesh but instead of seeking affiliation to an approved examination authority in Uttar Pradesh, the respondent No. 3 chose to affiliate to an examination authority at a distance place at Raipur which was also not approved by respondent No. 2 and was even abolished by the Supreme Court.

14. The respondent No. 2 categorically contended that despite instructions dated 4th February, 2005 to affiliate to examination authority constituted by U.P. State Government, the college approached respondent No. 1, a Deemed University, to conduct the examination. Though respondent No. 1 is a deemed university but it is also not approved by the respondent No. 2 u/s 12(2) of the Pharmacy Act for conducting the D Pharma Examination. Reliance was also placed by respondent No. 2 on its letter dated 10th May, 2005 by which it was specifically clarified that respondent No. 1 (deemed university) cannot affiliate other institutions. Regarding respondent No. 1, Pharmacy Council of India, contended that respondent No. 1 has appointed about 900 study centres all over the country which generally have two to three rooms with no infrastructure and faculty though UGC had not permitted respondent No. 1 to have off-campus centres. According to UGC norms, respondent No. 1, deemed university, can only give degrees for classes conducted in its own premises in Rajasthan.

15. The petition is also opposed by the Pharmacy Council of India on the ground that the College, respondent No. 3, is not approved u/s 12(1) of Pharmacy Act for the conduct of "Course of study" for the purpose of admission to an approved examination for Diplomas and consequently the petitioners are not eligible to sit in the examination u/s 12(2) of the Pharmacy Act.

16. The respondent No. 2 has also detailed the cases filed by respondent No. 3 where no relief was granted which facts have not been disclosed by the petitioners. A writ petition No. 10845 of 2005 was filed on 18th July, 2005 by the respondent No. 3 seeking a writ of Mandamus to the Pharmacy Council of India to conduct the examination through IASE, respondent No. 1, and to nominate

any examination authority to conduct the examination.

17. After hearing the college and Pharmacy Council of India, the Court in Writ Petition No. 10845 of 2005 passed the following order:

Counsel for the Petitioner is unable to disclose who has accorded the Petitioner legitimacy by way of registration. All that is being stated is that fifty five students have undergone classes with the Petitioner and are now to take their examinations. In the case filed by Professor Yashpal the Hon''ble Supreme Court was pleased to de-recognise several Universities. The Petitioner was affiliated to one of these very Universities. It must sink or swim along with the Institute to which it had been affiliated.

The Court is always sympathetic with the cause of students. In doing so it must not forget the public at large. If students commit the folly of joining institutions of dubious character then they cannot later be heard to show that they have undergone a course which may not sufficiently equip them to start a particular profession. In the present case the Institution attended by the Petitioners has not been accorded any registration or recognition. There is certainly a likelihood that the students have not got formal education to the extent that is expected by the Council of Pharmacy. The effect may be that Pharmacists who are insufficiently educated may be imposed onto society.

Counsel for the Petitioner presses for immediate directions to the Respondents to indicate the Centre where the examinations are to be held. If these Orders are passed they will virtually decide the Petition in favor of the Petitioner. Counsel for the Respondent prays for an opportunity to file a Counter-Affidavit. Counter-Affidavit be filed by the Respondents within six weeks. Rejoinder, if any, be filed within two weeks thereafter.

18. Another application for modification of order dated 18th July, 2005 was filed by the respondent No. 3 on 3rd August, 2005 which was, however, dismissed. The writ petition No. 10845 of 2005 was subsequently withdrawn with liberty to file another writ petition and thereafter another writ petition bearing WPC No. 17687 of 2005 was filed which was also dismissed on 12th September, 2005. A review petition being RP No. 269-2005 was also filed on 26th September, 2005 for review of order dated 22nd August, 2005 which was also dismissed on 20th February, 2006. While dismissing the review petition, the Court had held

On 18.7.2005, an order in some detail had been passed rejecting the petitioner's prayer for interim orders. On 22.8.2005, the petition was dismissed as withdrawn. The contention of the applicant/petitioner is that the application for withdrawal mentioned that the petition be dismissed as withdrawn with liberty to file a fresh petition. Having perused the order dated 18.7.2005 once again, it is not likely that I would have granted permission to file a fresh petition. The submission that leave to file a fresh petition had been granted is rejected.

The present application has not been filed immediately after passing the orders

dated 22.8.2005. Had that been so done some credence may have been given to the applicant that the words granting liberty had not been featured in the orders due to some secretarial oversight. The sequence of the events is that yet another petition was filed by petitioner which came to be dismissed on 12.09.2005 on the strength of the dismissal of the present petition. Even on that date counsel for the petitioner did not submit that the present petition had been allowed to be dismissed with liberty to file a fresh petition. This application has been filed on 22.08.2005.

I can not accede to the contentions of the learned Counsel for the petitioner/applicant that while dismissing the present petition, leave had actually been granted to file a fresh petition.

It is palpably an afterthought. The application is malafide and is dismissed with costs of Rs . 2000/- payable to Advocates Welfare fund.

February 20, 2006 sd/-

Vikramajit Sen, Judge

A SLP No. 24052-24053 of 2005 was also filed on 5th December, 2005, which was also dismissed as withdrawn.

19. The respondent No. 2 submitted that it is a statutory body constituted u/s 3 of the Pharmacy Act, 1948 for regulating the practice of pharmacy throughout the country. Relying on the Education Regulation, 1991 the respondent No. 2 asserted that examination of an institution should be held by an examining authority which should either be a statutory Indian University or a body constituted by the Central and the State Government and that the examining authority has to be approved by the Pharmacy Council of India u/s 12(2) of the Pharmacy Act for the conduct of examination and the approval would be granted only if the Examining Authority fulfills the conditions specified in Appendix C of the Education Regulation, 1991. By communication dated 4.2.2005 it was intimated to Respondent No. 3 by the respondent No. 2 that the course study and the examination shall be approved only after the respondent No. 3 obtains affiliation from an examining authority and fulfills all other requirements of the Education Regulations, 1991.

20. The respondent No. 2 further contended that despite a clarification which was given by letter dated 10.5.2005 by the respondents to the petitioners that they cannot affiliate Diploma Pharmacy Institutions and conduct D. Pharma examinations since a Deemed University cannot affiliate other institutions and that they have not indicated any provision under which it has been recognized to affiliate under the provision of the UGC Act. It was further clarified that if they affiliate then the said examination would not be approved u/s 12 of the Pharmacy Act for the purposes of registration as a pharmacist and that the Pharmacy Council of India will not be responsible for the same and entire consequence thereof shall rest on the respondent No. 1. The respondent No. 1,

however, issued no objection on 1.6.2005 to respondent No. 3.

21. Regarding the Marwar College of Pharmacy, Maulasar (Didwana), Nagour, Rajasthan, the respondent No. 2 contended that approval was granted only for the conduct of course and the approval was not granted to respondent No. 1 for conduct of the course and for the examination u/s 12(1) and (2) of the Pharmacy Act. The relevant provisions of the Pharmacy Act are as under:-

Section 12 of the pharmacy act is as under:

Section 12(1):-Any authority in the State, which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with 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 examination, and the Central Council, if satisfied after such enquiry at 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 at the 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 course of study and examination are required to be undergone and generally as to the requisite for such courses of study and examination.

22. The respondents further asserted since the D. pharma course was not approved by the respondent No. 2 so the students admitted by the respondent No. 3 have not Therefore undergone a "course of study" approved u/s 12(1) of the Pharmacy Act and Therefore they are not eligible to appear in examination u/s 12(2) of the Act to qualify for registration as a pharmacist. The respondent No. 2 also submitted that IASE is not approved for conducting the D Pharma examinations and the students of the unapproved institutions are not eligible to sit in the examinations to qualify for registration as a pharmacist in respect of which they cited a series of case laws.

23. The petitioners filed the rejoinder affidavit refuting the averments made in the counter affidavit and reiterating the submissions made in the petition.

24. The petitioners have also filed an additional affidavits enlisting various universities/deemed universities which are recognized by the respondent No. 2 as Examination Authority under Regulation 18 of the Education Regulation, 1991 irrespective of the fact that such universities are itself not imparting courses in the pharmacy and are not conferring degrees and diploma in pharmacy and not

imparting education in pharmacy.

25. The respondent No. 2 has also filed the additional affidavit submitting that the prayer sought in the writ petition is against the provisions of the Pharmacy Act, 1948 and also against the UGC guidelines which does not permit Deemed University to affiliate other institutions and the same will defeat the very purpose of enactment of the Pharmacy Act.

26. I have heard the counsel for the parties and have perused the petition, affidavits and the documents filed with them. The questions which have come up for consideration are whether the petitioners who are the students of an unaffiliated institution who have not undergone a "course of study" can be allowed to appear in the examinations; whether the notification of the University Grants Commission stipulating that the deemed University can not affiliate other colleges can be ignored and despite these notification, whether a deemed university can be an examination authority without complying with the fulfillment of requirement of Pharmacy Act.

27. From the following dates it emerges unequivocally that the present petition has been filed after the respondent No. 3 which has not been approved by the respondent No. 2 and despite being an unapproved college, enrolled the students including petitioners, and when respondent No. 3 failed to get any order allowing the students of unapproved college to appear in the examination, the present petitions have been filed by the students seeking similar relief in the present petition which were sought by the respondent No. 3 in his writ petition. The petitioners have sought directions to the respondent No. 1 to conduct the examination of petitioners, to direct respondent No. 2 to approve respondent No. 1 as examination authority and to direct the respondent No. 2 to conduct inspection of respondent No. 3. A brief summary of writ petitions and other petitions filed by the respondent No. 3 are as under:

18.2.2005 Respondent No. 3 filed a writ petition WPC 10845 of 2005 seeking interim order that the fifty five students be allowed to appear in the examination, which was declined on the ground that the respondent No. 3 failed to disclose who accorded respondent No. 3 legitimacy by way of registration and interim order was declined.

03.08.2005 Another application filed by respondent No. 3 for modification of order dated 18.02.2005 and grant of interim order which was also dismissed.

22.08.2005 Writ petition, WPC 10845 of 2005 was dismissed as withdrawn by the respondent No. 3/college.

12.09.2006 Another writ petition being WPC 17687 of 2005 filed by the college/respondent No. 3 inter alias seeking the relief that the students enrolled by the college be allowed to appear in the examination, was also dismissed.

26.09.2005 Review petition filed by the college/respondent No. 3 for review of order dated 22nd August, 2005 contending that the writ petition was dismissed

as withdrawn with liberty to file a fresh petition.

05.12.2005 SLP filed by the college/respondent No. 3 was also dismissed as withdrawn.

14.12.2005 Present writ petition filed by the students

20.02.2006 Review petition filed by the college/respondent No. 3 was also dismissed.

While declining the relief to the college/respondent No. 3 this Court had observed that it is always sympathetic with the cause of students, however, while doing so it must not forget the public at large. It was held that if the students commit the folly of joining institution with dubious character, then they can not be heard to say that they have undergone a course which may not sufficiently equip them to start a particular profession but nevertheless they may be allowed to appear in the examination. The Court had declined relief to the respondent No. 3 on the ground that it has not been accorded any registration or recognition and declined the students of such an institute any relief. The respondent No. 3 had even pressed for immediate directions to indicate the centre where the examination were to be held which was also declined by order dated 18th July, 2005. After the respondent No. 3 failed to get the relief for its students, the present petition has been filed by the students seeking similar relief. Significantly nothing has been disclosed by the petitioners, who are the students of respondent No. 3, about the writ petitions and other proceedings filed by the respondent No. 3 where the relief to allow the students to appear in the examination was declined and thereafter the writ petitions were either dismissed or withdrawn by the respondent No. 3.

28. Despite specific directions in accordance with rules and regulations to the respondent No. 3 that admission to the students were to be granted only after obtaining the approval for the conducting the D. Pharma Course from the respondent No. 2, which approval could be granted u/s 12 of the Pharmacy Act, without obtaining a no objection certificate from the valid examining authority under the rules, the respondent No. 3 went ahead with the admission of the students. The respondent No. 3 had been directed to fulfill the requirement of education Regulations, 1991 by 30th September, 2004 for the course of 2005-2006. But in violation of these directions the respondent No. 3 first admitted students, then forwarded an application on 30th September, 2004 for the academic session 2005-2006. Consent of a valid examination authority was a pre-requisite for consideration of application and examination authority also had to comply with conditions laid down under Appendix "C". Not only this despite instructions dated 4th February, 2005 to respondent No. 3 to affiliate to examination authority constituted by U.P. State Government, the college approached respondent No. 1, a Deemed University, to conduct the examination. Though respondent No. 1 is a deemed university, but it is not approved by respondent No. 2 u/s 12(2) of the Pharmacy Act.

29. The Examination Authority which intends to conduct examination of the diploma course in pharmacy should not only be either a statutory Indian University or a body constituted by the Central or State Government but it is required to fulfill conditions as laid down under the Education Regulations, 1991 and the condition prescribed under appendix "C". The relevant provision of Education Regulations, 1991 are as under:

18. Approval of Examinations:- The examinations mentioned in Regulations 10 to 13 and 15 shall be held by an authority herein after referred to as the examining authority in the State, which shall be approved by the Pharmacy Council of India under Sub-section (2) of Section 12 of the Pharmacy Act, 1948. Such approval shall be granted only if the examining authority concerned fulfills the conditions as specified in Appendix "C" to the these regulations.

APPENDIX C

CONDITIONS TO BE FULLFILLED BY THE EXAMINING AUTHORITY

1. The Examining Authority shall be either a statutory Indian University or a body constituted by the Central or State Government. It shall ensure that discipline and decorum of the examinations are strictly observed at the examination centres.

2. It shall permit the Inspector or Inspectors of the Pharmacy Concil of India to visit and inspect the examinations.

3. It shall provide:-

a) adequate rooms with necessary furniture for holding written examinations;

b) well-equipped laboratories for holding practical examinations;

c) an adequate number of qualified and responsible examiners and staff to conduct and invigilate the examination; and d) such other facilities as may be necessary for efficient and proper conduct of examinations.

4. It shall, if so required by a candidate, furnish the statement of marks secured by a candidate in the examinations after payment of prescribed fee, if any, to the Examining Authority.

5. It shall appoint examiners whose qualifications should be similar to those of the teachers in the respective subjects as shown in Appendix-B.

6. In pursuance of Sub-section (3) of Section 12 of the Pharmacy Act, 1948, the Examining Authority shall communicate to the Secretary, Pharmacy Council of India not less than six weeks in advance the dates fixed for examinations, the time-table for such examinations, so as to enable the Council to arrange for inspection of the examinations.

7. The Chairman and at least one expert member of Examining Committee of the Examining Authority concerned with appointment of examiners and conduct of

pharmacy examinations should be persons possessing Pharmacy qualifications. Regulation 18 read with Appendix "C" of the Education Regulation, 1991 Therefore, provides that the examining authority must be a statutory Indian University or a body constituted by the Central or State Government and that same must be approved by the Pharmacy Council of India u/s 12(2) of the Pharmacy Act, 1948 which approval shall be granted only if the examining authority concerned fulfills the conditions as specified in Appendix "C" to the these regulations.

30. It is not disputed by the petitioners that the respondent No. 1 is a deemed university which status was granted by a gazette notification dated 25.6.2002 issued by the Ministry of Human Resource Development, Department of Secondary and Higher Education and the same is as under:-

In exercise of powers conferred by Section 3 of the University Grants Commission Act, 1956(3 of 1956), the Central government, on the advice of University Grants commission, hereby declares the Institute of Advanced studies in Education or Gandhi Vidya Mandir, Sadarshahr, Rajasthan as a Deemed to be University for the purpose of the approved said act with immediate effect.

31. The definition of "University" and "Deemed University" as provided under the University Grants Commission Act, 1956 are as under:- Section 2(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

Section 3. Application of Act to institutions for higher studies other than Universities:- The Central Government may, on the advice of the Commission declare, by notification in the Official Gazette, that any institution for higher education, other than a University shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institutions as if it were a University within the meaning of Clause (f) of Section 2.

32. Thus Section 3 provides that once a institution is declared as a "deemed university" all the provisions of the UGC Act, 1956 shall apply to such institutions. Does it imply that despite all the provisions of the UGC Act,1956 being applicable there is no difference between the `Universities" and "Deemed Universities". If the University Grants Commission considers that the Universities and Deemed Universities are different despite Section 3 of the UGC Act, 1956 and has issued notification in this regard, the petitioners are not entitled to contend that the respondent No. 1, a deemed University is entitled to affiliate other institutions. The petitioners can not seek any relief contrary to any notification of the UGC without challenging the same and making University Grants Commission as the party to the present writ petition.

33. u/s 3 of the UGC, Act, a deemed University status will be given to those

institution that for historical reasons or for any other circumstances are not Universities and yet are doing work of high standard in specialized academic field compared to a University and granting of a University status would enable them to further contribute to the course of higher education which would normally enrich the institution and University system. The University Grants Commission is empowered to take such steps as it may think fit for the promotion and co-ordination and improvement of the university education and for advancing higher education. The UGC may under the Act regulate the powers which are to be exercised by a deemed university which in turn will help in advancing higher education in India. By communication dated 10th May, 2005 it was specifically clarified that the 'Deemed University' can not affiliate other institution. It had come to notice that respondent No. 1 has appointed 900 study centers which generally have two to three rooms with no infrastructure and faculty and the UGC has not permitted respondent No. 1 to have off-campus centers. According to UGC norms, respondent No. 1, deemed university can only give degrees for classes conducted at its own premises. A fortiori the 'Deemed University' can not conduct examination of other institutions. According to UGC norms, respondent No. 1, deemed university can only give degrees for classes conducted at its own premises. Section 3 of the UGC Act, Therefore, does not endow upon a Deemed University an unfettered power to exercise all the powers exercised by a University. In any case the notifications issued by the UGC stipulating that the deemed university can only give degrees for classes conducted in its own premises and can not affiliate other institutions and if UGC has not permitted respondent No. 1 to have off campus centers, then on the petitions of the students of one of the institution, who has already been declined any relief, the relief against the notifications of the UGC can not be granted to anyone.

34. Even if a 'Deemed University' contrary to the notification and norms of the UGC, hypothetically can affiliate other institutions, even then to be an examination authority under the Pharmacy Act, such a 'Deemed University' has to be approved by the Pharmacy Council of India u/s 12 of the Pharmacy Act. The respondent No. 3 had filed various writ petitions seeking similar reliefs including that the respondent No. 1 is competent to be an examination authority which writ petitions were either dismissed or withdrawn by the respondent No. 3. The respondent No. 1 has not been approved u/s 12 of the Pharmacy Act and no petition has been filed by the respondent No. 1 that it is entitled to be approved by the respondent No. 2.

Consequently the students of an unapproved institution, now can not be allowed to seek such relief which have been declined to the respondent No. 3 as granting of such relief will be an abuse of process of law, even if the findings in the writ petition filed by the respondent No. 3 are not *res judicata*. In any case, the petitioners have not disclosed as to how the respondent No. 1 fulfills the norms prescribed under the Pharmacy Act to be an examination authority. It is apparent that examining authority should not only be either a statutory Indian University or a body constituted by the Central or State Government but it has to be

approved by the Pharmacy Council of India u/s 12(2) of the Pharmacy Act. Admittedly the respondent No. 1 has not been approved by the Pharmacy Council of India. Because the respondent No. 1 is a "Deemed University" in terms of Section 3 of the UGC Act, will not absolve it from fulfilling the norms u/s 12 of the Pharmacy Act.

35. The respondent No. 1 is not entitled to be declared as examination authority even on the plea of the petitioners that Respondent No. 1 is already an examination authority of Marwar College of Pharmacy, Maulaudsar(Didwana), Nagour, Rajasthan. This fact has been denied by the respondent No. 2. It has been contended that the respondent No. 1 was only accorded permission to conduct the course at Marwar College of Pharmacy, Maulasar (Didwana), Nagour, Rajasthan, and the approval was not granted to respondent No. 1 for conduct of the course as well as the examination u/s 12(1) and (2) of the Pharmacy Act. The fact that the respondent No. 1 was granted permission to conduct the examination also for the said college at Didwana, Nagour has not been substantiated by the petitioners. In any case if the respondent No. 1 is not entitled to be an examination authority on account of non fulfillment of norms and terms and conditions under the Pharmacy Act, any aberration will not entitle the petitioners for such relief which will tantamount to direct the respondent No. 2 to perpetuate illegalities contrary to the provisions of Pharmacy Act. Consequently on this count also the petitioners are not entitled for any directions to the respondent No. 2 to approve the respondent No. 1 as the examination authority as has been claimed by the petitioners.

36. Consequently the petitioners are not entitled for any directions to the respondent No. 2 to approve the respondent No. 1 as the examination authority nor the petitioners are entitled for directions to the respondent No. 2 to approve/affiliate the respondent No. 3 in the present facts and circumstances of the cases.

37. The petitioners/students have also got admission without verifying that the respondent No. 3 is not recognized or affiliated by the respondent No. 2. Though the petitioners have alleged that when an institute is starting for the first time course of study, approval or recognition of institute is not mandatory for diploma course in Pharmacy (D-Pharma) as the said course is different from other courses and for the said course recognition is not required before commencement of the course. This plea of the petitioners is, however, contrary to the specific stipulation by the respondent No. 2 to the respondent No. 3 in its letter dated 4th February, 2005 that it will be the responsibility of the respondent No. 3 to obtain approval of the Pharmacy Council of India u/s 12 of the Pharmacy Act before the first batch of students pass out. Admittedly the respondent No. 3 has not been granted approval and it remains an institution which is not approved or affiliated to the respondent No. 2. Thus without obtaining the requisite no objection certificate and the approval from the PCI the respondent No. 3 admitted the students and after failing to get any relief on the ground that the interest of the students is involved, the present petitions have been filed by

the students. Therefore there has been a total disregard to the statutory provisions. Even if the students are allowed to appear in the examinations to be conducted by the respondent No. 1, which can not be an examination authority in accordance with the rules and regulations, the students who will pass the examination will not be entitled for registration as pharmacist by the respondent No. 2. The petitioners in the present facts and circumstances have also not undergone a 'course of study' in accordance with the rules and regulations and the Respondent No. 3 remains an institution which is not recognized and affiliated and the petitioners are the students of an institution which is not affiliated/approved or recognized. Whether the students of such an institution which is not recognized or affiliated can be allowed to appear in the examinations or a directions can be given to the respondent No. 2 to allow such students to appear in the examination to be conducted by the respondent No. 1.

38. It is no more rest integra that the candidates of the institutions, not affiliated can not be allowed to appear in the examination conducted by the Universities. The petitioners are not entitled for any relief on the ground of interest of students. The Supreme Court has held that the orders in the case of unaffiliated institution's students should not be passed more on benevolence than on their legal rights. In 1995 (1) SUPP SCC 304, Dental Council of India v. Harpreet Kaul Bal and Ors., the Apex Court had observed as under:

...There are many pronouncements of the Supreme Court cautioning against exercise of jurisdiction characterized more by benevolence than on settled legal principles. A relief must be such as could be considered permissible in law and worked out by the application of legally recognized principles. The decision must have legitimacy of legal reasoning and should not incur the criticism of lacking objectivity of purpose and rational and legal justification. Where an educational institution embarks upon granting admission without the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the University to hold examination for the benefit of such students. Such an order is totally unjustified.

The Supreme Court has held in a number of cases that the students of unaffiliated institution should not be allowed to appear. In Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, the Apex Court had held as under:

...this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into

account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions.(Para8).

Similarly in another case N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, , the Apex Court has held that it is not appropriate that the jurisdiction of the Court either under Article 32 or Article 226 of the Constitution of India should be frittered away for such purposes. The Apex Court had observed as under:

...These institutions were established and the students were admitted into these institutions despite a series of press notes by the Government. If by a fiat of the court we direct the government to permit them to appear at the examination we will be practically be encouraging and condoning the establishment of unauthorized institution. It is not appropriate that the jurisdiction of the court either under Article 32 or Article 226 of the constitution should be frittered away for such a purpose.

Similar observations have been made by the Supreme Court in the cases State of Maharashtra Vs. Vikas Sahebrao Roundale and others, and A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, . The Apex Court had held as under:

We do not think that we can possibly accede to the request made on behalf of the students any direction of the nature sought for would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the law.

In the case of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra SLP(C) No. 2067 OF 1991 decided on 19.2.91, the Supreme Court specifically held in the matter of the unaffiliated schools. The relevant observation of the Supreme Court is as under:

We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognized schools and are made to suffer. Some courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation.

The petitioner had taken admission in the respondent No. 3, though it was not affiliated by the respondent No. 2. The decision of the Supreme Court and the observation made there in a case St. John's Teacher Training Institute (for

Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., will be relevant for consideration:

...the courts should not issue fiat to allow the students of unrecognized institutions to appear at the different examination pending the disposal of the writ petitions. Such interim orders effect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions of the court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examination are filed only when the dates for examination are notified. Many of such institutions are not only 'Masked phantoms' but are established as business ventures for admitting substandard students, without any competitive tests, on basis of considerations which can not even be in the interest of the minority. There is no occasion for the courts to be liberal or generous, while passing interim orders, when the main writ applications have been filed only when the dates for the examination have been announced. In this process, students without knowing the design of the organisers of such institutions, become victim of their manipulations.

39. The students of unapproved institution are not eligible for registration as pharmacist to practice the profession. Thus the college which sought approval of the D pharma course was required to apply to Respondent No. 2 for necessary approval along with the no objection certificate from an examining authority which examining authority in turn should have been approved by the respondent No. 2 u/s 12(2) of the Pharmacy Act, 1948. Respondent No. 1 granted no objection certificate to respondent No. 3 despite the fact that it did not have the necessary approval of the respondent No. 2 under the provision of the pharmacy act, thus it was not an approved examining authority. Mere grant of no objection certificate is not sufficient. It has to be seen whether it is a competent examining authority under the Pharmacy Act. It was also noted that the NOC was granted by the respondent No. 1 in complete disregard to the specific communication made by the respondent No. 2 to the respondent No. 1, dated 10th May, 2005 conveying that being a deemed university, it cannot affiliate other institutions and were further warned that if it affiliates and conducts the examinations then the same will not be approved by the PCI u/s 12 of the Pharmacy Act.

40. The students should have, before taking admission made necessary inquiries and merely because they have undergone the alleged 'course of study' which is denied by the respondent No. 2 and have also taken up practical examination and that their career will be affected if direction to conduct the examination is not granted to them, the Court cannot issue such writs of mandamus to the respondent No. 2 to violate its own rules and regulations. Such a direction is neither desirable nor permissible in the facts and circumstances. Any directions sought by the petitioners shall also be contrary to notice/circular dated 9th August, 2005 at page 316 of the paper book and clarificatory circular dated 23rd

August, 2005 at page 317 of the paper book of the University Grants Commission. Consequently the petitioners are not entitled for any of the relief sought by them. No directions can be given to the respondent No. 2 to approve the respondent No. 1 to be an examination authority nor any directions can be given to approve the respondent No. 3. The writ petitioners in the facts and circumstances are not entitled for any relief. No other relief has been pressed by the petitioners except that they should be allowed to appear in the examination and the respondent No. 1 be allowed to be the examination authority and the approval be granted to the respondent No. 3. The petitioners are not entitled for any of the relief in the facts and circumstances of these cases.

41. The writ petitions are, Therefore, without any merit and are dismissed. Parties are left to bear their own costs.