
(2021) 08 SHI CK 0264
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4755 Of 2020

Rajesh Kumar

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Himachal Pradesh Para Medical Council Act, 2003 — Section 19, 38

Citation : (2021) 08 SHI CK 0264

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : S.D Gill, Vivek Attri, Ajay Vaidya, Dalip K Sharma

Final Decision : Disposed Of

Judgement

Sureshwar Thakur, J

1. Though the writ petitioner avers in paragraph 10 of the petition, that, the requisite qualification/course as has been obtained by him, from Vinayaka Mission University, has been approved by Distance Education Council, IGNOU, New Delhi, and, the Joint committee of "AICTE-UGC-DEC". However, the afore made submission only remains in the realm of pleadings, as, no evidence is brought on record to prove the same.

2. The learned counsel for respondent No.2 has contended, that Section 19 of the Himachal Pradesh Para Medical Council Act, 2003 (for short "the Act"), bars the imparting of relevant courses, by all educational institutions concerned, unless prior permission of the State Government rather is obtained. However the provisions of the Act (supra), as, carried in Section 19 of the Act, and, as become extracted hereinafter, only bars, establishment of paramedical institution(s), and, also bars the paramedical institution(s), to open a new course or training besides bars the institution(s) concerned to increase their admission capacity, rather beyond the prescribed limits, obviously unless prior permission of the State government is accorded. However, the afore mandate, if comes to be

profoundly, and, deeply read, its application is limited only to establishments of paramedical institutions, within the State of Himachal Pradesh, and, cannot become extended to carry any meaning, that paramedical institutions rather established outside the territory of the State of Himachal Pradesh, and imparting valid relevant distant courses or correspondence courses, vis-à-vis, the relevant discipline, also, there being barred to validly impart education, in the apposite courses to students concerned, unless prior thereto they obtained the statutory permission, from the government of Himachal Pradesh. Therefore, no prior permission of the Government of Himachal Pradesh is required, vis-à-vis, the afore valid modes of impartings of education by validly established institutions located outside the territory of the State of Himachal Pradesh.

19. Permission for establishment of new paramedical institution.-

(1) Notwithstanding anything contained in this Act,-

(a) no person shall establish a para-medical institution; and

(b) no paramedical institution shall-

(i) open a new or higher course of study or training which would enable a student of such course or training to qualify himself for the award of any recognized paramedical qualification; or

(ii) increase its admission capacity in any course of study or training, except with the previous permission of the State Government obtained in accordance with the provisions of this section.

Explanation.- For the purposes of this section, the expression " person" includes any University or a trust but does not include the State Government.

(2) Every person or paramedical institution shall, for the purpose of obtaining permission under sub-section (1), submit to the Council a scheme in accordance with the provisions of sub-section (3).

(3) The scheme referred to in sub-section (2) shall be in such form, contain such particulars, preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the paramedical institution concerned and thereafter, it may-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or institution concerned for making a written representation it shall be open to such person or paramedical institution to rectify the defects, if any, specified by the Council; and

(b) consider the scheme, having regard to the factors referred to in sub-section (8), and submit the scheme together with its recommendations thereon to the State Government.

(5) The State Government may, after considering the scheme and the recommendations of the Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or institution concerned, and having regard to the factor referred to in sub-section (1), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1) :

Provided that no scheme shall be disapproved by the State Government except after giving the person or institution concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or paramedical institution whose scheme has not been approved by the State Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme has been submitted for the first time under sub-section (2).

(6) Where, within a period of one year from the date of submission of the scheme to the Council under sub-section (2), no order passed by the State Government has been communicated to the person or institution submitting the scheme, such scheme shall be deemed to have been approved by the State Government in the form in which it had been submitted to the Council and accordingly, the permission of the State Government required under sub-section (1) shall also be deemed to have been granted.

(7) In computing the time limit specified in sub-section (6), the time taken by the person or institution concerned submitting the scheme in furnishing any particulars called for by the Council, or State Government, shall be excluded.

(8) The Council, while making its recommendations under clause (b) of sub-section (4) and the State Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely :-

(a) whether the proposed paramedical institution or the existing paramedical institution seeking to open a new or higher course of study or training, shall be in a position to offer the minimum standards of paramedical education as prescribed by the Council under section 26 of this Act;

(b) whether the person seeking to establish a paramedical institution or the existing paramedical institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, training and other facilities to ensure proper functioning of the paramedical institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such paramedical institution or course of study or training or as a result of the increased admission capacity, have been provided or shall be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such paramedical institution or course of study or training by persons having the recognized paramedical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(9) Where the State Government passes an order either approving or disapproving a scheme under this section a copy of the order shall be communicated to the persons or paramedical institution concerned.

3. The afore reasons, for making the afore interpretation to the mandate supra, as, carried in Section 19 of the Act, would bring it in concurrence with the mandate carried in Section 38 of the Act, relevant provisions whereof becomes extracted hereinafter, as, therein the statutory coinage appertaining, to the necessity of the aspirant concerned possessing the relevant recognized qualification(s), does extend, to the aspirant concerned, the apposite statutory privilege to seek the aspired registration, upon, his holding the apposite qualification, from any validly established educational institution, though not existing in the territory of Himachal Pradesh, (i) yet it being evidently affiliated to a valid educational institution, or its becoming recognized by the regulatory mechanism concerned. Consequently, when the clout of the coinage "recognized qualification", is not restricted to any recognized educational institution hence existing within Himachal Pradesh nor when the mandate (supra) occurring in Section 19 of the Act, does not, trammel the coinage "recognized qualification", as, occurring in Section 38 of the Act, to its emanating only hence from validly established institution within the State of Himachal Pradesh. Therefore a harmonious reading of the provisions (supra) paves way for an inference that any validly established institution rather outside Himachal Pradesh, hence purveying teachings to the students concerned, and, who thereafter become conferred with degree/diploma, thereupon concomitantly theirs bestowing a, recognized qualification to the students concerned, and, also empowering the aspirant concerned to seek his valid enlistment.

Registration renewal and State Register- (1) No person shall be registered on the State Register as paramedical practitioner unless he possesses a recognized qualification and has not paid such fee, as may be prescribed and different fee may be prescribed for different qualification but it shall not exceed one thousand rupees and the registration shall be valid for a period of three years.

(2) The Council shall cause to be maintained a State Register of Paramedical practitioners in such form, as may be prescribed, by regulations.

(3) The Register shall be deemed to be public document within the meaning of Indian Evidence Act, 1872 (1 of 1872).

(4) Every registered paramedical practitioner registered under sub-section (1) shall renew his registration after every three years on payment of such fee as may be prescribed."

4. Since this Court, has to the statutory coinage "Recognized Qualification" borne in Section 38 of the Act, imparted the connotation, that it conveys, and, is suggestive, that the apposite qualification, upon, emanating from any educational institution within the territory of India, hence holding the valid certificate of affiliation, from the premier regulatory mechanism, or, being validly recognized by the State Government concerned, necessarily purveying, to, the successful degree/diploma holders the privilege to seek their valid enlistment. Therefore, no contra therewith meaning can be ascribed to the afore relevant portion of Section 19 of the Act. Consequently the operation, and, sway of the ordained statutory necessity of a prior permission, from the State of Himachal Pradesh, for establishing a paramedical institution concerned, and, for therethroughs its validly operating its courses, is confined only to those educational institutions, which exist or are to be established within the territory of the State of Himachal Pradesh.

5. Reiteratedly, the mandate (supra) cannot apply to invalidate hence valid affiliations meted to educational institutions established outside the State of Himachal Pradesh, either from the UGC or the State Governments concerned, nor also any distant learning/teachings imparted in the relevant discipline, by the recognized institutions concerned, can be brought within the realm of mandate (supra). Therefore, this Court concludes that even if Vinayka Mission University, is not meted any apposite prior permission within the mandate of Section 19 (supra), yet if it holds the requisite affiliation from the State Government concerned or from the UGC, it could impart valid trainings in the discipline concerned.

6. Be that as it may, since material exists on record rather suggestive that the courses or learnings as become successfully completed by the writ petitioner from Vinayaka Mission University, being a sequel of the University, being validly affiliated to UGC, and, other premier educational regulatory mechanisms. Therefore, the petitioner, was invalidly denied registration in the relevant register by the respondent concerned. Consequently, a mandamus is pronounced, vis-à-vis, the respondent concerned, to, within four weeks enlist the petitioner, in the relevant register.

In view of the above, the present petition stands disposed of alongwith all pending applications.