
(1996) 03 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 316 of 1994

Saroj Rani and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Pharmacy Act, 1948 — Section 10
Pharmacy Regulation 1948 — Regulation 10

Citation : AIR 1996 P&H 241

Hon'ble Judges : S.P. Kurdukar, C.J.; Swatantar Kumar, J

Bench : Division Bench

Advocate : Govind Goel, for the Appellant; Ms. Reetu Bahri, AAG, for the Respondent

Judgement

Swatantar Kumar, J.—This Letters Patent Appeal has been preferred by 40 students of Dehat Vikas College of Pharmacy Tigaon, District Faridabad against the judgment of learned single Judge dated 4-4-1994. Rejecting the contentions raised on behalf of the petitioners, the learned single Judge dismissed the writ petition.

2. In order to appreciate the contentions raised in the present appeal, it will be appropriate to refer to necessary facts giving rise to this appeal. Dehat Vikas Educational Society (hereinafter referred to as the Society) registered under the Societies Registration Act established Dehat Vikas College of Pharmacy, Tigaon, District Faridabad (hereinafter referred to as the College). The Society applied for approval to the All India Council for Technical Education (hereinafter referred to as the Council) to start the Diploma Course in Pharmacy. The Council issued approval vide its letter dated 1-1-1992 for the academic year 1991-92. It was stated in this letter that the College was permitted to have intake of 40 students subject to the terms and conditions specified in the said letter.

Citing Reference:

3. It is an admitted case before us that these 40 seats could not be justified and utilised for the academic year 1991-92. No students were admitted to the 1st year of course by the College in accordance with the approval granted by the Council vide letter dated 1-1-1992 because the students could not have completed the requisite period of study in the academic year, to enable them to take the final examination for that year. In continuation of letter dated 1-1-1992 Ann-exure P-1, the Council issued another letter of approval dated 25-9-1992 wherein the College was permitted to admit 60 students to the first year of the course for the academic year 1992-93 again subject to the terms and conditions stipulated in the letter. It needs to be noticed that both these letters provided that the College should comply with the terms and conditions and it would be inspected by the competent team and request for further approval would be considered thereafter. The College in the academic year 1992-93 in all admitted 100 students; 60 students to the first year course and 40 students were admitted directly to the 2nd year of the course. The College charged fees from these students and commenced the course. Vide letter dated 1-12-1992 the Council had issued show cause notice to the College and the Society as to why their approval be not withdrawn. The College submitted an explanation to the Additional Secretary of the Council vide its reply dated 14-12-1992. The basic stand taken by the College was that they had admitted 40 students directly in the second year of the course in accordance with the regulations framed u/s 10 of the Pharmacy Act, 1948 in furtherance to the approval granted vide letter dated 1-1-1992. As there were various grounds indicated in the show cause notice, the College had submitted detailed reply with regard to other allegations against them. After receipt of show cause notice the Council issued two letters at different times. Vide letter dated 1-2-1993 the Council clearly informed the College that approval to the admission of these 40 students directly to the second year cannot be accorded and classes of these students were directed to be stopped forthwith and further they were called upon to explain endowment fund of Rs. 10 lacs and they were required to complete other formalities. Further the Society was directed to cancel the admission of 40 students who were wrongly admitted. Thereafter a letter was written to the Director of Technical Education, Govt. of Haryana confirming these facts and also sending the copy of the letter dated 1-2-1993. After consideration of the reply the action with regard to withdrawal of approval was dropped by the Council. On or about 15th December, 1993 the petitioners filed the writ petition with a prayer that their admission to the second year of two years' diploma course in pharmacy is valid and the respondents should be directed to allot roll numbers to them and permit them to sit in the examination which was to commence from 5-1-1994 and to declare their results with all other eligible students.

4. All India Council for Technical Education was impleaded as respondent No. 3 while the College was impleaded as respondent No. 4 in the writ petition. Both these respondents were served in the writ petition but they did not contest the litigation and probably after filing an affidavit, they even absented from the

proceedings. Similar is the position even now before us. Both these respondents are not represented before us in spite of the fact that they were duly served in this appeal.

5. The stand of the College is common to that of the petitioners while respondents Nos. 1 and 2 have contested the case and according to them there was no approval for the second year pharmacy course for the academic year 1992-93. The College could not have admitted 40 students directly to the second year of the course. The terms and conditions of the Brochure issued for the academic year clearly prohibit such admission. They had further submitted that the College had violated the directions of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, and consequently violated the conditions imposed by the State Government and all these 40 petitioners were admitted to second year course without approval of the State Government.

6. The learned single Judge accepted both contentions of the respondents and dismissed the writ petition resulting in the filing of the present appeal.

7. The basic question that arises for consideration in the appeal before us is whether the College had any authority and whether their action in admitting 40 students directly to the second year of two years" Pharmacy Course could be termed as bona fide action or justifiable on any ground. The Council while granting approval for the first academic year 1991-92 had permitted initial annual intake of 40 students subject to the fulfilment of the conditions stated in that letter. According to condition No. 2 the infrastructure and other facilities including equipment faculty etc. were to be provided as per norms. The Expert Committee was to visit the College in May, 1992 to assess compliance and for considering grant of further approval. The Society was to make deposits of at least Rs. 10 lacs in the name of the College before commencing the classes of 1st year. This approval remained ineffective because no students were admitted to 1st year as there was hardly any period left for the academic year in question. As already noticed even till 1-12-1992 no such amount was deposited or security was provided and in fact the Society did not create security even till Feb. 1993 when a direction was issued by the Council to the President of the Society. The Council issued second approval for the academic year 1993-94 again subject to the stipulation that intake of 60 students was permitted only for the first year and again subject to the terms and conditions which were stated in the letter. This approval clearly pre-supposes that no admission to the second year was permissible and it specifically among other terms and conditions which were identical to the previous approval also directed as under :--

"An Expert Committee of the Northern Regional Committee (NRC) will visit the College by May, 1992 to assess compliance with the above conditions. Further approval or otherwise of the course after academic year 1992-93 will be considered by the Council based on the recommendations of the NRC."

The prospectus issued by Government of Haryana, Technical Education Department provides for admission to Pharmacy Course as well. The relevant portion of the prospectus reads as under :--

"For Pharmacy Course :

(i) Matriculation or equivalent examination in the second division with Physics, Chemistry and Mathematics with not less than 45% marks in aggregate in case of open category and for candidates seeking admission against the categories of Sportsmen/ Women and Backward Area of Haryana (40% in case of Scheduled Caste/Tribe, Backward Class, Ex-servicemen and children/wards of Armed Forces Personnel/Ex-servicemen and sons and grandsons of Freedom Fighters of Haryana), or

(ii) Higher Secondary examination or equivalent with Physics, Chemistry and Mathematics with not less than 40% marks in aggregate in case of open category and for -candidates seeking admission against the category of Sportsmen/ Women and Backward Area of Haryana (35% in case of Scheduled Caste/Tribe, Backward Class and Ex-servicemen and children of Armed Forces Personnel/Ex-servicemen and sons and grandsons of Freedom Fighters of Haryana), or

(iii) Pre-Engg., Prc-Medical or equivalent with not less than 35% marks in aggregate in case of open category and for candidates seeking admission against the categories of Sportsmen/Women and Backward Area of Haryana (pass marks in case of Scheduled Caste/Tribe, Backward Class, Ex-servicemen and children / wards of Armed Forces Personnel/Ex-servicemen and sons and grandsons of Freedom Fighters of Haryana).

The candidate having passed :--

(i) The Intermediate examination in Science, or

(ii) The 1st year of 3 years" degree course in Science, or

(iii) 10+2 examination (Academic Stream) in Science, or

(iv) An examination accepted by Pharmacy Council of India as being equivalent to any of the above examination, shall be eligible for admission directly to second year course against failures in the first year course examination, provided the institution has adequate facilities for the conduct of theory and practical classes in the un-exempted subjects of the Diploma Course in Pharmacy (Part I) i.e. 1st year. The institution shall reserve seat(s) within the sanctioned intake for the failed students of 1st year as and when they are able to secure promotion to the 2nd year.

(v) Candidates seeking admission directly to second year course must mention the word second year" specifically in the application form."

From the above terms and conditions for Pharmacy Course it is clear that the College could not by any stretch of imagination assume the authority to admit 40

students directly to the 2nd year of the course. This admission is clearly a fraud played by the College against the State as well as the students. As no students were admitted in the academic year 1991-92 and the approval had come to an end by efflux of time. No doubt remains in this regard after the issuance of the approval by the Council on 25-9-1992 when the College was required to admit only 60 students in the first year and this approval was in continuation of the approval dated 1-1-1992. Thus first approval even merges and became non-existent upon issuance of the subsequent approval. The interpretation put forward by the College is nothing but a clever device to admit these 40 students illegally and obviously for extraneous consideration. Even otherwise, there is not a single document on record which could justify the contention of the College that they were entitled to admit 40 students directly in the second year of the course on the strength of approval dated 1-1-1992 as they had not admitted in the first year under that approval. This concept of deemed promotion to the 2nd year and consequently deemed entitlement for admission to the 2nd year directly of these 40 students is beyond comprehension of the Court. This claimed right of the College has no basis and cannot be legally recognised. This stand is not only mischievous interpretation of the Rules/ Regulations and the Brochure but is also in direct conflict with the various instructions and letters issued by the Council, as aforesaid. It is admitted before us that the students were admitted somewhere in June, 1992. Till that date the College had no right to commence even 1st year course as they had not given security of Rs. 10 lacs in favour of the College as directed by the Council. Thereafter vide letter dated 1-2-1993, the Council had clearly directed the College not to conduct the classes of these 40 students and it was stated that their admissions have been cancelled. Instead of complying with this direction, the College kept the students in dark and continued the classes and ultimately the students filed the writ petition. The students were never informed by the College that their request for grant of approval of admission of these 40 students directly to the 2nd year was not only declined by the Council rather the Council had issued show cause notice for withdrawal of approval already granted. The show cause notice dated 1-12-1992 issued by the Council, the reply dated 14-12-1992, letter dated 1-2-1993 and all subsequent correspondence was never brought by the College to the notice of the students. The instructions issued by the Council are binding on the College and we feel that the stand of the College, looked from any angle, cannot be justified on any ground whatsoever and the students may not be totally innocent but they also cannot be permitted to take advantage or derive benefit from unappreciable conduct of the College and the Society.

8. The petitioners in any case were bound by the terms and conditions of the Brochure and they were clearly put on guard by the respondent-State with regard to fate of their admission in view of the aforesaid conditions of the Brochure. In fact, the State would be bound to what it has notified to the students at large. Thus, the eligibility conditions declared for admission to pharmacy course will bind the students. The conditions specified in the Brochure

have not been assailed in the writ petition on the ground of their invalidity or being violative of Regulation 10 of the Pharmacy Act. In any case in this circumstance, the Brochure would bind all concerned. The Supreme Court in the case of Sandeep Barar and another Vs. State of Punjab and others, observed as under:--

"We are of the view that these appeals are to be allowed on the short ground that the methodology for admission to the reserve seats for Sportsmen/Sports Women is the function of the State and has to be decided by the State Government. It is the function of the executive to lay down the procedure for admission to the reserve categories. It is no doubt correct that this Court has the power of judicial review and if the validity of the Government instructions is challenged this Court can examine the same. We are, however, of the view that the High Court was not justified in directing that different procedures than the one notified by the State Government be made applicable to the admissions, In the present case the Govt. instructions dated August 6, 1986 had superseded the earlier Presidential order dated August 30, 1984. The admissions for the sessions 1989-90 were to be held on the basis of the gradation assessed under the 1986 instructions. The High Court was not justified in issuing the direction that the 1984 instructions and not the 1986 instructions was to be followed. The legality of the 1986 instructions was not challenged before the High Court. The High Court only gave its preference for the weightage system provided under the Presidential order dated August 30, 1984 and directed that the admissions be regulated on that basis. This could not be done by the High Court."

9. Where the State Government changes the conditions of the prospectus subsequently the Court can interfere to set aside the action of the State and held that the State is bound by the prospectus. Full Bench of this Court in the case of Amardeep Singh Sahota v. The State of Punjab, reported as 1993 (2) PLR 212, made the following observations :--

"The prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In Randeep Kaur v. The State of Punjab, a Division Bench of this Court had an occasion to consider the value of a prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus before the entrance examination and that the admission has to be made on the basis of the instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the prospectus issued for admission to the 1992-93 course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said prospectus, it was not open to the State Government to issue contrary instructions and as such also the notification dated July 13, 1992 issued by the State Government is invalid in law."

Learned counsel for the appellants tried to place reliance upon Regulation 10 of

the Regulations framed u/s 10 of the Pharmacy Act, 1948. The said regulation reads as under:--

"10. Eligibility for appearing at the examination for Diploma in Pharmacy (Part IIA) -- Only such students who produce certificate from the head of the institution concerned in proof of his having regularly add (sic) satisfactorily followed the second year course of study by attending not less than 75 per cent, classes held (both in theory and in practical separately of each subject) and having successfully passed examination for Diploma in Pharmacy (Part I) shall be eligible for appearing at the examination for Diploma in Pharmacy (Part IIA) as given in the table below it, however, the student has completed the first year course and appeared in all subjects in the Diploma in Pharmacy (Part I) examination, his failure in not more than two theory papers and two practicals shall not debar him from attending the second year course:

Provided that the result of Diploma in Pharmacy (Part IIA) examination of such candidate shall be declared only after he passes all the subjects of examination for Diploma in Pharmacy (Part I):

Provided further that a student who has passed :--

- (i) the Intermediate examination in Science, or
- (ii) the first year of a three years" degree course in Science, or
- (iii) 10+2 examination (academic stream) in Science, or
- (iv) an examination accepted by the Pharmacy Council of India as being equivalent to any of the above examinations,

shall be eligible for admission directly into the second year class of the Diploma in Pharmacy (Part IIA):

Provided also that a student entering the course under the second provision shall be required to attend classes appear and pass in those subjects as prescribed for the Diploma in Pharmacy (Part I) in which he has not previously passed at an equivalent examination. This may be done simultaneously with or independently of the Diploma in Pharmacy (Part II) Course and examinations depending on the capability of the student and the facilities available to him before he becomes eligible for securing the Diploma in Pharmacy (Part IIA)."

Learned counsel for the appellants argued that this regulation will prevail over the Brochure as there is an apparent conflict between them. What appears to us is that there is no conflict between the regulations and the prospectus. Inasmuch as they are complementary to each other and have to be construed harmoniously. The interpretation given by the learned counsel for the appellants would in fact completely frustrate the very scheme of both the Acts, i.e. All India Council for Technical Education Act, 1987 and the Pharmacy Act, 1948. Both these Acts operate in academic fields. If what the College had done in the present case is accepted to be correct interpretation, it would amount to violation

of the very scheme and the purpose of the Acts. Vide approval granted for the academic year 1992-93 the College was permitted to admit 60 students in the first year of the course and no approval was granted for the second year of the course of Pharmacy but the College admitted 100 students; 60 students under the approval for the academic year 1992-93 and 40 students under the garb of the approval granted for the specific year of 1991-92 directly to the second year. Thus the, management of the College was able to frustrate and defeat the very purpose of these Acts. With complete disregard to the instructions and flouting the statutory provisions, they manipulated the admission of the 40 students directly in the second year of the course allegedly on the basis of the approval issued for the academic year 1992-93. The College had no right whatsoever, to commence the course of the second year and grant admission to these 40 students directly in the second year of two years of Pharmacy course. These admissions are violative of statutory rules, regulations framed under these Acts, and publicly declared terms and conditions of the Brochure. The College was not permitted at any point of time during the academic years 1992-93 and 1993-94 to admit students to the second year of the Pharmacy course directly. Terms and conditions of Brochure did not permit direct admission to second year of the course except limited to the seats of failed candidates which became available as a result of failure in the 1st year of course. We are further unable to appreciate the attitude of the College and the Council both even in not appearing before the Court much less in rendering assistance to the Courts. We find nothing wrong in the action of the Council in refusing the original registration of these students and not permitting them to take their examination. The action is completely in consonance with the Rules, Regulations and conditions of the Brochure. Learned counsel for the appellants then argued that as the students were permitted to take their examinations under orders of the Court, all these illegalities should be overlooked and if they had passed, they should be deemed to have completed their course of Pharmacy of 2 years. This argument is entirely misconceived and we are not prepared to accept the same. Admission directly to second year was limited to the number of candidates who failed in the first year course. There was no infrastructure with the College to conduct the course for the 2nd year and in fact it started the course in violation of the terms and conditions of letter of approval for both the years 1991-92 and 1992-93. It is a matter of concern, that two years of these students are likely to be wasted, but the mere ground of compassion cannot be a reason enough to permit violation of the Rules and encourage back door entry to such courses and specially the courses which are technical in nature and are practical and essential as is in the present case. Maintenance of higher standards of education, minimum qualitative proficiency in technical education and providing proper infrastructure to enable the students to learn properly are the few basic requirements underlying in the provisions of two aforesaid statutes. The Council will fail in discharging its statutory duty if such admissions are regularised and the students are permitted to complete their course in the present manner. Inaction on the part of the Council cannot be ignored. They failed to take strict timely action in consonance with the provisions

of All India Council for Technical Education Act and even defaulted in rendering proper assistance to the Court, where their presence and expertise would have been of some help in determining the controversy in the present proceedings. We may mention that the Council not only absented before us but also did not appear in proceedings before the learned single Judge. Avoidance of responsibility may not be solution to any problem. Functioning of the Council requires laying down of proper guidelines, providing guidelines to the institutions and must improve being taking up the follow-up action. The appropriate and timely action is the least that would be expected from such highly placed technical bodies. We are quite conscious of the damage that is being caused to the academic career of the students, but it is the settled principle of law that the Court would not endorse illegal action of the authorities or other bodies on the ground of compassion alone. The Supreme Court in the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, held as under :--

"Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.

10. We are of the considered view that anything done or permitted to be done in detriment to the provisions of the Act, Rules, Regulations and terms and conditions of the Brochure will not only be prejudicial to the interest of the students so admitted but would adversely, affect the requisite standards of high education and training. Non-implementation of instructions/directions issued by such statutory authority are bound to prove counter-productive and would not be in the interest of the society at large.

11. Circumventing completion of required course of Pharmacy or circumventing requisite period of study with complete lack of requisite infrastructure is bound to prove fatal to the academic career of these students. At this stage it would be appropriate to make reference to some other judgments of the Supreme Court. In the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , the Supreme Court 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 provision of the University Act and the provisions 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 laws."

In the case of Students of Dattatraya Adhyapak Vidyalaya v. State of

Maharashtra, SLP (C) No. 2067 of 1991, decided on 19-2-1991, the Supreme Court held as under :--

"We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some Court 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."

Consistent with the view of the Highest Court of the land as indicated in various decisions, we are unable to accede to the prayer of the learned counsel for the appellants. Each student has paid fee of Rs. 8,000/- for that year, in addition to expenditure that they might have incurred in their day to day continuation of the course. They have wasted their precious time in attending the classes which were specifically prohibited by the orders of the Council. Irresponsible attitude and manipulative action on the part of the College resulted in wastage of more two academic years of the students and added misery to their suffering which otherwise could have been restricted to the wastage of one academic year, if directions were followed, certainly call for awarding of special compensation to the students. The Courts cannot close their eyes to the practical realities that two precious years of these students have been wasted by illegal action on the part of the College. The stand of the College, as already discussed, is unsustainable and frivolous. In these circumstances, we direct that respondent No. 4 College shall return the entire fee of Rs. 8,000/- to each appellant with compensation of Rs. 15,000/- i.e. to say that respondent No. 4 shall be liable to pay a sum of Rs. 23,000/- to each appellant. One of the reasons for awarding such compensation is to prevent the repetition of such admissions in Colleges and we do expect that this will act as deterrent in future against such acts of the College. The admission of the students to the College for academic year 1992-93 would not be hit by decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., in as much as the Supreme Court had specifically directed that the admissions in various courses would be regulated prospectively. It will be relevant to make reference to the following observations of the Supreme Court itself in the Unni Krishnan J.P. case :--

"..... The Governments (Central and State) and all other authorities granting aid shall impose such conditions forthwith, if not already imposed. These conditions shall apply to existing as well as proposed private educational institutions.

..... This scheme shall apply to and govern the admission to professional Colleges commencing from the academic year 1993-94."

Thus the contention of the Department that the College had failed to regulate its admission under the Centralised Scheme of admission for the year 1992-93, cannot be sustained. The learned Judge has made certain observations in this regard but has not given any conclusive finding in this regard.

12. We will be failing in our duty if we do not make certain observations with

regard to conduct of All India Council for Technical Education and other official/ respondents in the writ petition. It is expected from these respondents being highly placed technical body, that they would ensure timely compliance of the orders and directions issued by them while exercising their statutory powers. It is strange to note that the authority on the one hand had cancelled the admissions of 40 students vide their letter dated 1-2-1993 but without ensuring its compliance by visit to the College or otherwise, the Council decided to drop the action against the College, with regard to withdrawal of approval granted for the first year of the course. We expect the Council to take all appropriate steps well in time, to avoid such inconvenience, harassment and serious consequences which would adversely affect the academic career of the students who are admitted to such courses as in the present case.

13. In the result, the Letters Patent Appeal is dismissed. Respondent No. 4 College, shall make the payment, as aforesaid, to all the petitioners/students within a period of three months from the date of this order.

14. Appeal dismissed.