

(1999) 01 KAR CK 0046
In the Karnataka High Court

Sunil Raosaheb Patil

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Pharmacy Act, 1948 — Section 10, 10 (1), 12 (1), 12 (2)

Citation : (1999) 5 KarLJ 289

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri Ashok R. Kalayanashetti, for the Appellant; Smt. V. Vidya, High Court Government Pleader, for the Respondent

Judgement

1. Sri S.S. Haveri, learned Counsel, is permitted to file vakalath on behalf of the Pharmacy Council of India.
2. The petitioner has approached this Court for issuance of a direction to the respondent 2-Board of Examining Authority of the State of Karnataka as approved u/s 12(2) of the Pharmacy Act, 1948 ("the Act", for short), to issue a certificate of Diploma in Pharmacy to the petitioner, since pursuant to an interim order passed by this Court he has successfully completed Part I and Part II of the examination in the said course.
3. From the statement of objections, filed on behalf of the Examining Authority, it remains an undisputed fact that the Chauson College of Pharmacy, Chikodi, in which the petitioner claims to have undertaken his studies, was an unrecognised institution since it has not been given approval by Pharmacy Council of India in terms of Section 12(1) of the said Act.
4. The question is whether the petitioner claiming to be a student of unrecognised institution and having passed examination pursuant to the interim order passed by this Court can claim as of right a certificate of Diploma in Pharmacy. Sub-sections (1) and (2) of Section 12 of the Pharmacy Act reads as under:

"12. Approved courses of study and examinations.--(1) Any authority in a 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 the examination, and the Central Council, if satisfied, after such enquiry as 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 as a pharmacist under this Act".

Section 10 of the Pharmacy Act provides for framing of education regulations. Sub-sections (1) and (2) of Section 10 reads thus:

"10. Education Regulations.--(1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe-

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations".

5. The Central Council pursuant to the above powers and on fulfilment of the procedures laid down therein has framed the Education Regulations 1991 for the Diploma Course in Pharmacy. Regulation 7 provides for courses of study, Regulations 9, 10, 11, 12, 18 and 19 are relevant for the present purposes and they read as under:

"9. Approval of the authority conducting the course of study.--The course of regular academic study prescribed under Regulation 7 shall be conducted in an institution, approved by the Pharmacy Council of India under sub-section (1) of Section 12 of the Pharmacy Act, 1948:

Provided that the Pharmacy Council of India shall not approve any institution under this regulation unless it provides adequate arrangements for teaching staff as specified in Appendix-B to these regulations.

10. Examinations.--There shall be an examination for Diploma in Pharmacy (Part I) to examine students of the first year course and an examination for Diploma in Pharmacy (Part II) to examine students of the second year course. Each examination may be held twice every year. The first examination in a year shall be the annual examination and the second examination shall be supplementary examination of the Diploma in Pharmacy (Part I) or Diploma in Pharmacy (Part II), as the case may be. The examinations shall be of written and practical (including oral) nature, carrying maximum marks for each part of a subject, as indicated in Tables III and IV below.-

TABLE III Diploma in Pharmacy (Part I) Examination

..... TABLE IV Diploma in Pharmacy (Part II) Examination

..... 11. Eligibility for appearing at the Diploma in Pharmacy, Part I examination.--Only such candidates who produce certificate from the Head of the academic institution in which he/she has undergone the Diploma in Pharmacy, Part I course, in proof of his/her having regularly and satisfactorily undergone the course of study by attending not less than 75% of the classes held both in theory and in practical separately in each subject shall be eligible for appearing at the Diploma in Pharmacy (Part I) Examination.

12. Eligibility for appearing at the Diploma in Pharmacy, Part II examination.--Only such candidates who produce certificate from the Head of the academic institution in which he/she has undergone the Diploma in Pharmacy, Part II course, in proof of his/her having regularly and satisfactorily undergone the Diploma in Pharmacy, Part II course by attending not less than 75% of the classes held both in theory and in practical separately in each subject shall be eligible for appearing at the Diploma in Pharmacy (Part II) Examination.

18. Approval of examinations.--The examinations mentioned in Regulations 10 to 13 and 15 shall be held by an authority hereinafter referred to as the Examining Authority in a 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 these regulations.

19. Certificate of passing examination for Diploma in Pharmacy (Part II).--Certificate to having passed the examination for the Diploma in Pharmacy, Part II shall be granted by the Examining Authority to a successful student".

A combined reading of the aforesaid provisions clearly establishes that unless the candidate concerned has pursued his studies in an institution conducting the courses which have been approved by the Central Council, he does not become eligible for appearing at the Part I examination and consequently as also at the Part II examination. Regulation 19 provides for grant of certificate of Diploma in Pharmacy by the Examining Authority. But, such a certificate can be granted by the Examining Authority only if the candidate is found to have passed the two

examinations, after pursuing his studies in an approved institution. The provisions contained in the regulations are inextricably interwoven to achieve the object of maintaining the minimum standard of education in Pharmacy and those cannot be read in isolation. Therefore, in sum and substance, a candidate who has not pursued his studies in an approved institution, cannot for any reason whatsoever, be awarded a certificate of Diploma in Pharmacy.

6. In the present case the foundational fact borne out from the records itself is that the respondent-institution was admittedly not approved by the Central Council and therefore no student who claims or alleged to have pursued his course of study in such an institution was at all eligible to sit at the examination or can be granted with the diploma certificate.

7. Curiously, the respondent-institution though admittedly not approved by the Council as required u/s 12(1) of the Act by filing a Writ Petition No. 14651 of 1993 had obtained an interim order on 25-5-1993 in the following terms:

"That the respondents be and are hereby directed to permit the students of the petitioner-college to take the examination of 1st and 2nd year D. Pharma at their risk".

But and quite advisedly, after taking benefit of the said interim order and without taking a chance of getting the issues decided on merits, institution filed a memo for dismissal of the writ petition as not pressed. Pursuant to the said memo this Court on 4-11-1993 passed the following order:

"A memo is filed today in the Court stating that writ petition may be dismissed as not pressed. The learned Government Advocate, Sri N. Devdas has no objection to do so.. The memo is placed on record and the writ petition is accordingly dismissed as not pressed".

8. From the above facts it is clear that the respondent-institution had filed the writ petition only to obtain an interim order and take benefit thereof. The effort was clearly to play fraud on this Court. The Supreme Court in the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., , had warned the High Courts not to grant such interim orders. Para 20 of the report reads as under:

"Before we part with this judgment, we consider it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Courts should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect 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 examinations are filed only when the dates for examinations are notified. Many of such institutions are not only "masked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on basis of considerations which cannot serve even the interest of the minority".

In the above case the Supreme Court has taken serious objection to grant of such interim orders and was compelled to hold that even if for one or the other reason, the student of unrecognised institutions were permitted to take examination and even if they successfully passed the same subsequently they cannot be issued with the certificates either of diploma or degree.

9. At this stage I may also refer to the case of Guru Nanak Dev University a Parminder Kaur Bansal and Another. In this case, the High Court by its interim order had directed for admission of ineligible two students to Internship Course. Pursuant to the interim order they were given the admissions. During the pendency of litigation, they completed 12 months of their internship. The High Court by its final order dated 27-8-1992, as a logical corollary and consequence of implementation of the interim orders, directed that their internship be regularised. Supreme Court, on appeal, set aside the said order by holding that:

"Sri Gambhir is right in his submission. We are afraid that 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".

10. Quite recently the Supreme Court again on detailed examination of the said menace and the devastating results arising thereof on the maintenance of educational standards, in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , at paragraph 4, has held that, to permit the students of any affiliated institutions to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Courts on misplaced sympathy of the students".

11. The learned Counsel appearing for the petitioner has sought support from the judgment of the learned Single Judge (M.F. Saldanha, J.) of this Court in Writ Petition Nos. 3177 to 3179 of 1996, DD: 1-2-1996, in paragraph 2 whereof it has been held that:

"The petitioners were students, who have been forced to file these petitions as, despite having completed the examination successfully and the practicals, they have not been issued the Diploma Certificates for the D. Pharma Course. This Court while disposing of the W.P. No. 741 of 1994 on 13-1-1994 made it clear that irrespective of the direction regarding recognition of the college, in respect of which certain directions were issued, that the students should not be made to suffer because of the case, and therefore their admission should be regularised. The implication of that order is that the infirmity regarding non-recognition of the institution does not survive and therefore the solitary ground on which the authorities are refusing to issue their certificates gets extinguished. The petitioners should not be made to suffer any longer and the respondents are accordingly directed to issue D. Pharma Certificates to them within an outer limit of 8 weeks from today. It presupposes the fact that the petitioners who have completed the examination successfully have also been equally successful in the practicals. With these directions the petitions stand disposed of".

12. In my opinion, the said judgment is clearly per incuriam since the law laid down by the Supreme Court in this regard has not been brought to the notice of the learned Single Judge. Nonetheless it has been said that the appeal preferred against the said order was dismissed in Writ Appeal No. 7757 of 1996, DD: 11-12-1996. In my opinion, despite the said fact the law laid down by the Supreme Court binds me more than any judgment of this Court either by the learned Single Judge or the Division Bench.

13. Before parting, I may also clarify here that so far as diploma course in Pharmacy is concerned, the State Government has no role to play under the Pharmacy Act and the servants of the Government or political executives should forbear from interfering with the conduct of the examination or grant of certificates.

14. For the aforesaid reasons, writ petition is dismissed but without costs.