

SUPREME COURT OF INDIA

Shirpur Education Society through Its Principal

Vs.

State of Maharashtra

C.A.No.892 of 2020

(R.F.Nariman and S.Ravindra Bhatt,JJ.,)

31.01.2020

ORDER

SLP (C)No.17051 of 2019

1. Leave granted. The appeal was heard, with the consent of the counsels for the parties.
2. The appellant (hereafter “the Society”) is aggrieved by the final judgment of the Aurangabad Bench of the Bombay High Court, which declined its claim for admitting students in its undergraduate pharmacy (B. Pharma) course, up-to an intake of 180 students, with a further intake of 60 students, in the evening shift.
3. The undisputed facts of the case are that the society established the RC Patel Institute of Pharmaceutical Education and Research College (hereafter “the college”) after securing permission and clearance of the All India Council Technical Education (“AICTE”, hereafter), the Pharmacy Council of India (“PCI” hereafter), Director of Technical Education, Govt of Maharashtra, and the North Maharashtra University, in 1992. Its initial student intake of 30 was increased, after permission from the authorities, in 1996 and further, to 60, annually, in 2001. In 2010, AICTE published regulations titled AICTE (Grant of Approvals for Technical Institutions) Regulations, 2010 (hereafter “AICTE 2010 Regulations”) in terms of which student intake could be increased to 180 and, in addition, the concerned college could start a second shift of classes, for which the maximum intake could be 60 per year. In tune with this policy, the AICTE published the approval process handbook. On 23.08.2010, the appellant’s college increased its annual intake capacity to 240 (180 in the regular shift and 60 in the second shift). This intake increase, apparently had the prior approval of the Govt. of Maharashtra (on 30.06.2010); the Director of Technical Education too approved the increase in intake, by an order dated 09.11.2011. This position continued for the later years, too.
4. The Director of Technical Education, by an order made in 2013, reduced regular intake from 180 to 100; the intake for the second shift, however, was left undisturbed. This reduction, however, was interdicted by an interim order (dated 25.06.2013, made in W.P.

4992/2013 by the Aurangabad Bench of the Bombay High Court) which resulted in continuance of the status quo, with respect to the number of seats (at 180). For the next year, AICTE approved the total intake (regular plus second shift) @ 240 per year, on 04.06.2014; however, the Director of Technical Education again reduced it - like in the previous year, to a total of 160- by an order, which was stayed by the Aurangabad Bench of the Bombay High Court on 06.07.2015. The same pattern continued, for 2015-16, 2016-17 and 2017-18, AICTE approved a total intake of 240. For the three years, the Director of Technical Education reduced the intake. Again, the High Court (in WP 6259/2015 and WP 6702/2016- by order dated 27.06.2016 and 23.06.2017) stayed the Director's order, and continued the status quo.

5. In 2018, the AICTE published its handbook for admissions. The appellant claims that its college was compliant with all applicable regulations and rules; despite this, the AICTE's web portal showed a decreased intake. The petitioner unsuccessfully represented to the respondents; it thereafter approached the High Court by filing WP 7222/2019. It filed another writ petition, challenging the policy (of AICTE) enabling reduction in the intake. By the impugned judgment, the High Court dismissed WP 7222/2019.

6. The High Court noticed in the impugned judgement that the petitioner's grievance was two-fold- the absence of approval for the second shift by AICTE, and restriction of capacity to 100 students for the undergraduate course. The High Court noted that for the earlier years, the PCI used to restrict the capacity of the institution despite which AICTE used to grant approval for a larger intake of students. This conflict was on account of assertion of supremacy or primacy in the field of regulation of pharmaceutical education by both AICTE and PCI; the former had permitted the institution i.e. the society and its college to admit students with higher capacity. AICTE approved a total intake of 240 which included 180 in the morning shift and 60 in the evening shift. It was then noticed that the AICTE for the first time in 2018-19 reduced intake capacity in respect of the college. This was in terms of AICTE's powers under Section 23, Section 10 and Section 11 of the All India Council for Technical Education Act and Regulations, framed in 2018. It was noted that Regulation 2.2 dealt with the second shift and guidelines contained in the Regulations clauses spelt out the intake capacity (100) of only one shift. The High Court noted that at the undergraduate level, the maximum intake was 100 and no admission was permitted in the second shift. The court further noted that Appendix 3 to the Guidelines and handbook applicable for the year 2019-20 stated this position. The policy and regulations framed by AICTE were not subject to challenge before the High Court. According to the High Court no institution could admit, nor PCI could register students of the second shift and students beyond the prescribed intake capacity. In these circumstances, it was concluded that that no permission could be given to the society to admit students beyond the permissible limit in terms of the regulations in approval process handbook. The High Court also rejected the petitioners' arguments that its staff would be rendered unemployed if the AICTE's regulations and policies were to be applied and it were to act in accordance with the reduced intake. In view of these findings, the High Court dismissed the society's writ petition. The society is therefore before this court, in appeal.

7. Mr. Shyam Divan, learned senior counsel argues that the AICTE had violated the fundamental condition of providing a fair opportunity to the society before reducing the intake. It was urged that the impugned judgment did not consider that the society was entitled to continue with the existing intake capacity in terms of the Act, constituting the All India Council for Technical Education Act, 1987, and the Regulations framed thereunder. Learned senior counsel endeavoured to rely on the regulations and stated that there was no specific bar as regard existing institutions, preventing them from continuing to admit a particular number of students and organising shifts in all classes. It was submitted that in the absence of a specific bar in the regulations, or a bar under the parent enactment, the respondent could not have arbitrarily insisted that the intake capacity - which primarily applied to new institutions, were to be applied to all existing colleges.

8. Learned senior counsel urged that once the college or educational institution is permitted to set-up an institution with a specific capacity, the reduction of such capacity has to be justified by some compelling necessity. In the absence of such a necessity, the educational institution's right to carry on business, trade or vocation of its choice in exercise of the rights conferred under Article 19(1)(g) would be severely curtailed. It was urged that in other words, absent a specific statutory provision, neither regulations nor policies could cut down the intake capacity which was originally permitted. Learned senior counsel further elaborated that the ill effects of such restrictions are self-evident because the college would face severe financial crisis inasmuch as its capacity - in terms of teaching and other manpower as well as the physical infrastructure would be rendered surplus; its financial arrangements would be disturbed.

9. Learned counsel for the AICTE and PCI submitted that long ago, in 2010, the PCI was aware that certain institutions and colleges wished to start pharmacy colleges in the second shift. To stop this move, a letter dated 24.01.2010 was issued along with a public notice, clearly stating that second shift admissions could not be recognized and that the maximum intake would not exceed 100. This was further followed up through a letter and notice dated 10.09.2010 informing all pharmacy institutions, State Governments, examining authorities and others concerned that approval of admissions made over and above the sanctioned intake could not be forthcoming by the PCI and that such students admitted beyond the permitted intake capacity would not be eligible for registration as pharmacists. Likewise, it was clearly stated that pharmacy courses in the second shift would not be considered for approval under Section 12 of the Pharmacy Act, 1948, for purposes of the registration of professionals. It was further submitted that the B. Pharma course Regulations of 2014, stipulated that the PCI would prescribe the maximum intake capacity in any particular pharmaceutical college. This position was known to all despite which institutions and colleges went ahead on the strength of the AICTE notifications, to admit students in the second shift and also exceed the notified intake - beyond the regulations framed by the Council.

10. It is submitted that Chapter VI of the Approval Process Handbook 2019-2020-applicable to all technical institutes (existing/new), clearly stipulates that maximum intake

allowed in a Technical Institution shall be as per the Appendix 3. Clause 6.3 of chapter VI of the Approval Process Handbook 2019-2020 is reproduced below:

“6.3 The “Maximum Intake Allowed” in a Technical Institution offering Technical Programme(s) at Diploma/ Post Diploma Certificate/ Under Graduate Degree/Post Graduate Diploma/ Post Graduate Degree Level, WITHOUT NBA, shall be as per the Appendix 3 of Approval Process Handbook. However, for the Programmes other than Pharmacy and Architecture and Planning in Diploma/Under Graduate Level, a MAXIMUM OF THREE DIVISIONS PER COURSE is permissible WITH NBA, applicable to MBA also.”

11. It is submitted that the PCI does not register students of the second shift and students beyond the prescribed intake and that if petitioner’s college is allowed to admit students, it would be at their peril; it is the students who may have to undergo hardship after passing out the course. The AICTE, considering the fate of the students and to streamline the intake of students of the Pharmacy Courses and also to avoid any contradiction or inconsistencies in the decision taken by PCI, changed its policy to reduce intake.

Analysis and conclusions:

12. During the hearing, the Court was apprised of the fact that issues as to which body, i.e. the AICTE or PCI would be primarily responsible for regulation of pharmaceutical regulation in India is pending consideration before another Bench in several matters [T.P.(C) 87/2014 The Pharmacy Council of India v. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Ors. etc.; SLP(C) 4124/2016 The Pharmacy Council of India thr. its Registrar cum Secretary v. The State of Maharashtra Higher Technical Education and Government Department - totalling about 17 proceedings) are pending hearing before another Bench. In this view of the matter, this court does not propose to finally deal with the question of primacy of regulatory power in the field of pharmaceutical regulation. What is evident however is that the controversy before this court appears to have arisen especially on account of the conflicting claims to primacy made by the PCI on the one hand - on account of the provisions contained in the Pharmacy Act, which authorised it to prescribe norms and standards both in respect of pharmaceutical education as well as regulation of the provision of the pharmacists and the power of the AICTE under the AICTE Act to regulate technical education (“technical” being defined as inclusive of pharmaceutical education in India). Fortunately, the PCI and the AICTE now arrived at an understanding to move henceforth in a concerted manner in terms of the minutes of meeting held under the aegis of the concerned Minister on 03.01.2018. The relevant portions of the decisions taken in the said meeting are reproduced below:

“2. During the meeting, it was noted that both the Pharmacy Act of 1948 and AICTE Act of 1987 contain provisions regarding pharmacy education leading to duplication of regulations and considerable confusion at the field level. It was unanimously agreed that this dual regulation should be ended forthwith and in the following manner:

(i) The AICTE Act governing the general technical education would be amended deleting 'pharmacy' from its mandate. The pharmacy education would thereafter be governed by the Pharmacy Act, 1948.

(ii) Till such time the amendment takes place, PCI and AICTE will jointly inspect the institutions as and when required for maintaining required standards of education. Suitable structure should be built for coordination between both the organizations so that, even in the case of surprise inspections, the participation of representatives of both the regulators is ensured.

(iii) It was decided that affidavits reflecting these decisions may be filed by both Ministries in various pending court cases and withdrawal/dropping of proceedings may be prayed for.

3. It has been suggested that using the mode of mandatory disclosures (on the website of pharmacy institutions) on the performance parameters laid down by the regulators would work better than annual physical inspections currently being carried out by the PCI. Accordingly, PCI may work on reducing the number of inspections being carried out."

13. It is apparent that the college in this case proceeded to admit students asserting its right to do so, having regard to the AICTE regulations on account of the prevailing confusion. The PCI regulations were clear vis-a-vis the intake; to avoid any doubts, the situation was clarified by the public notice issued on 10.09.2010. Nevertheless, this court is of the opinion that since the society and the college took the precaution of approaching the High Court in a timely manner by filing writ petitions for each academic year (and the High Court granted permission - albeit through interim orders- to admit students up to a total intake of 240, annually), and having regard to the unsettled nature of the position which existed- vis-a-vis the regulatory sphere, the interests of students who were admitted up to and inclusive of the academic year 2018-19 and who had graduated would have to be protected.

14. This Court notices that at the stage of taking cognizance of the present petition and issuing notice, the State of Maharashtra was directed to upload the name of the petitioner's college in its web portal subject to final orders. At the same time, by the order dated 26.07.2019, the Court had clearly stated that no students would be allocated in the meanwhile. During the hearing, it transpired that the petitioner college had in effect admitted students in excess of the notified intake capacity of 100 and had also admitted students in the second shift despite the orders of the court (dated 26.07.2019). Clearly, therefore, such of the students who are admitted beyond the sanctioned intake capacity of 100 and those admitted in the second shift were so admitted contrary to this Court's order. Except such circumstance, this Court is of the opinion that all admissions made by the petitioner's college, requires to be regularized and those students who had graduated in the past need to be protected.

15. In view of the above discussion and, without in any manner deciding finally the issue of primacy of the two regulatory authorities, having regard to the minutes of their meeting dated 03.01.2018, the Court hereby directs the PCI to give due recognition to such of the students who had been admitted in the past during the pendency of all proceedings upto the total intake capacity of 240 (180 in the first shift and 60 in the second shift) on account of the interim orders made. The PCI is, therefore, directed also to give consequential benefit of registration to such students who graduated in the concerned undergraduate courses. Similarly, such of the students who fall within the 100 seats permitted intake capacity, notified for academic year 2019-20, shall be given due recognition and registration. However, students admitted beyond such capacity and those admitted in the second shift for academic year 2019-20 shall not be given such benefits.

16. This appeal is disposed of in the above directions keeping all questions of law open for arguments and decision in the other pending proceedings.