

RAJASTHAN HIGH COURT

Agarwal Pharmacy College

Vs.

State of Rajasthan

S.B. Civil Writ Petition No. 5539 of 2003

(Sunil Kumar Garg, J.)

14.01.2004

ORDER

Sunil Kumar Garg, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners on 23.9.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the impugned order dated 11.9.2003 (Annex.8) passed by the respondent No. 1 State of Rajasthan, Technical Education Department, Jaipur by which :-

(i) the admissions given by the petitioners above the prescribed limit in the D-Pharmacy Course were cancelled;

(ii) only those students, who came through Rajasthan Pre-Pharmacy Test, 2003 were found eligible;

(iii) the Management quota of 9 seats was held to be within 60 seats and therefore, it was directed that names of only 60 candidates be sent.

be quashed and set aside and the respondents be directed to regularise all the 79 students admitted in the D-Pharmacy Course with the petitioners' College and they be allowed to complete their Pharmacy Course.

2. The case of the petitioners as put forward by them in this writ petition is as follows:-

The petitioner No. 2 Jan Hit Sewa Sansthan is a registered Society under the All India Council for Technical Education Act, 1987 (hereinafter referred to as "the Act, 1987").

The case of the petitioners is that the applications were invited from the registered Societies and Trusts for opening Private Technical Colleges and in pursuance of that, the petitioners also applied in the name of petitioner No. 1 Agarwal Pharmacy College for two years' Diploma Course in Pharmacy. The said application of the petitioners was accepted by the respondents through order Annex.1 dated 28.4.2003.

The further case of the petitioners is that the Technical Education Department, Government of Rajasthan, Jodhpur through letter Annex.2 dated 30.6.2003 informed the petitioners that the All India Council for Technical Education (for short "AICTE") through letter Annex.3 dated 20.6.2003 granted the approval for opening of the Diploma Course in D-Pharmacy from the Academic Session 2003-04.

The further case of the petitioners is that though they applied for strength of 420 seats for admission in the Diploma Course in D-Pharmacy, but while granting permission, the AICTE, as per their policy, restricted the strength of the students up to 60 only.

The further case of the petitioners is that the State Government issued letter dated 21.5.2003 (Annex.5) to different universities in Rajasthan interpreting the judgment of the Hon'ble Supreme Court in *T.M.A. Pai Foundation and ors. v. State of Karnataka and ors.*, 2003(1) SCT 236 (SC) : ((2002)8 SCC 481) in which it was held by the Hon'ble Supreme Court that all private Colleges, who are un-aided from the Government have liberty to give admissions at their own with a restriction only that the University calendar has to be followed by the State Unaided Technical Colleges.

The further case of the petitioners is that the Course of Diploma in D- Pharmacy for the Academic Session 2003-2004 was started from 1st of July, 2003 and in view of the letter Annex.5 dated 21.5.2003 issued by the State of Rajasthan, the petitioners at their own means managed to admit 30 students in the first year Diploma Course in D-Pharmacy and that Course was of two years.

It may be stated here that during the course of arguments, it has been frankly admitted by the learned counsel appearing for the respondents No. 1 and 2 that out of these 30 students, 9 students were of management quota taken from the merit list prepared by the respondent No. 4 Coordinator after holding Pre-Pharmacy Test, 2003 and counseling. Thus, there remains dispute of only 21

students admitted by the petitioners at their own choice.

The further case of the petitioners is that a letter dated 1st July, 2003 (Annex.6) was issued by the Coordinator, Pre Pharmacy Test, Jai Narain Vyas University, Jodhpur (respondent No. 4) to the petitioners and the same was received by them on 5th July, 2003 and in that letter Annex.6, it was stated that the Coordinator was going to start the counseling of qualified candidates of PPT-2003 from 7th July to 9th July, 2003 at 9.00 AM at Department of Chemistry, Faculty of Science, New Campus, JNV University, Jodhpur.

The further case of the petitioners is that they were not aware that the students would be provided by the respondent No. 4 Coordinator.

The further case of the petitioners is that in the counseling, the petitioners were given a list of admitted students on 17.7.2003 and in that list, the names of 39 students were shown. The petitioners admitted all these 39 students in the Diploma Course in D-Pharmacy. The letter dated 17.7.2003 along with the list of 39 students is marked as Annex.7.

The further case of the petitioners is that they were under the impression that no further students would be given by the respondent No. 4 Coordinator, but on 19.7.2003, a list of 10 students was given to the petitioners for admission in the same Course. The sanctioned strength of students for admission in the Diploma Course in D-Pharmacy was only 60, while the petitioners have admitted 79 students in the following manner :-

(i) 30 students were admitted by the petitioners at their own choice which include 9 students of management quota taken from the merit list prepared by the respondent No. 4 Coordinator.

(ii) 39 students were admitted as per list given by respondent No. 4 Coordinator through Annex.7.

(iii) 10 students were admitted as per additional list given by the respondent No. 4 Coordinator on 19.7.2003.

Total : - 79 students

The further case of the petitioners is that 30 students including 9 students of management quota were admitted by them at their own means and if excess students were admitted by them in the Diploma Course in D-Pharmacy, a prayer

was made by them to the respondents to allow the excess students to complete their Course and it was also prayed that since 21 excess admissions were made by them, they may be reduced proportionately during the next academic year. However, the said representation of the petitioners was rejected by the State of Rajasthan through impugned order Annex.8 dated 11.9.2003 and that order Annex.8 has been challenged by the petitioners in this writ petition on various grounds and the main grounds are as follows :-

(i) That there is a clause of Excess Admission in AICTE Handbook for Approval Process (Academic Year 2003-2004) at page No. 43 item q and the same reads as follows :-

"q) *Excess Admission*

If any excess admission is made by approved Technical Institution during a particular academic year, the annual intake for such institution may be reduced proportionately during the next academic year."

In view of the above clause q and looking to the welfare of the students, the annual take for the petitioners' Institution may be reduced proportionately during the next academic year.

(ii) That if the *bonafide* mistake has been committed by the petitioners, for such mistake, the students should not be disturbed at all.

Hence, it was prayed that the impugned order Annex.8 dated 11.9.2003 passed by the respondent No. 1 State of Rajasthan be quashed and set aside and the respondents be directed to allow the 79 students admitted in the D- Pharmacy Course with the petitioners' College to complete their Course.

A reply to the writ petition was filed by the respondents No. 1 and 2 and their case is that the letter dated 30.6.2003 (Annex.2) was issued in pursuance of the letter dated 20.6.2003 (Annex.R/1) issued by the AICTE and a bare perusal of the letter Annex.R/1 dated 20.6.2003 clearly goes to show that the AICTE accorded the approval under the AICTE Regulations, 1994 and the approved intake was assessed as 60 and since the maximum capacity was of 60 students, therefore, the rest contentions raised by the petitioners in this writ petition are of no use to them.

The further case of the respondents No. 1 and 2 is that the petitioners' College

was entitled to give admissions through the Central Counseling by the Government of Rajasthan only which is the condition precedent to the aforesaid approval accorded to the petitioners and if the petitioners' College had violated the said condition by admitting the students at their own means, their College would be liable to be de-recognized as per the terms and conditions laid down in the order Annex.R/1 dated 20.6.2003.

It was further submitted by the respondent Nos. 1 and 2 that the AICTE Regulations, 1994 and AICTE Interim Policy Regulations dated 7.3.2003 (Annex.R/4) clearly provide that for Professional and Technical Colleges, the admission merit is determined by Common Admission Test (i.e. PPT for Rajasthan) conducted by the government Agencies. Furthermore, as per AICTE Regulations, 1994, no institution can admit students more than the sanctioned strength.

Thus, it was submitted by the respondent Nos. 1 and 2 that the petitioners had violated the AICTE Regulations, 1994 and AICTE Interim Policy Regulations (Annex.R/4) as well as the terms and conditions of the approval granted to them through letter Annex.R/1 dated 20.6.2003 because admittedly they had admitted 79 students against the sanctioned strength of 60 students. In these circumstances, it was submitted that the impugned order Annex.8 dated 11.9.2003 was rightly passed and it was perfectly legal and valid as it was passed in accordance with the AICTE Regulations (Annex.R/4) and the approval granted to the petitioners through letter Annex.R/1 dated 20.6.2003.

On point that excess admissions can be reduced proportionately during the next academic year, it was submitted by the respondents Nos. 1 and 2 that through letter Annex.R/7 dated 30.10.2003, this aspect was considered and it was held that the clause q at page 43 of the AICTE Handbook for Approval Process (Academic Year 2003-2004) was for the purpose of penalty clause for those institutions which admitted students in excess and this could not be taken as a basis for process of admissions. The penalty of reducing of excess admission seats taken would be effected for the forthcoming years till further orders. Therefore, it was submitted that the petitioners are not entitled to take shelter of the above clause q for normal admissions. Hence, it was prayed that the writ petition filed by the petitioners be dismissed.

A rejoinder to the reply of the respondent Nos. 1 and 2 was filed by the

petitioners on 28.10.2003 and in that rejoinder, it has been submitted by the petitioners that the letter No. 635 dated 20.6.2003 (Annex.R/1) was not sent to the petitioners by AICTE nor the same was received by the authorities of the petitioners' College and thus, if the excess students were admitted by the petitioners' College, they were admitted under the *bonafide* belief and the petitioners were not at fault and furthermore, the letter dated 20.6.2003 (Annex.R/1) was sent by the respondent No. 2 to the petitioners on 6.9.2003 and the same was received by the petitioners on 10th September, 2003, as is evident from the letter Annex.10. The petitioners have further placed reliance on clause q at page 43 of AICTE Hand Book for approval process (Academic year 2003-2004) for regularization of students admitted in excess of prescribed quota of 60 seats and further, the annual intake of the petitioners' College may be reduced proportionately during the next academic year.

A further reply to the rejoinder of the petitioners was filed by the respondent Nos. 1 and 2 and it was submitted by them that it is wrong to say that the terms and conditions were never informed to the petitioners, as the petitioners were well aware of the terms and conditions as is evident from Annexures 3, 9 and 10 filed by the petitioners and Annex.R/1 and Annex.R/2 filed by the respondent Nos. 1 and 2 along with reply.

It has been further submitted by the respondent Nos. 1 and 2 that the petitioners were aware about the details regarding Diploma admissions as PPT advertisement dated 29.3.2003 was published in the Rajasthan Patrika by the respondent No. 4 Coordinator and a copy of which is marked as Annex.R/3.

Not only this, through Notification Annex.R/4 dated 7th March, 2003, Interim Policy Regulations were notified, which provide procedure and guidelines for admission and as per Interim Policy Regulations (Annex.R/4), all the 60 seats including 9 seats reserved for the management must be filled up through Joint Entrance Test/Common Entrance Test conducted by Central/State Government or University followed by counseling as per present practice. However, the private unaided institutions may fill up the management seats by having their own counseling in an objective and transparent manner taking the students from same merit list prepared on the basis of Joint Entrance Test/Common Entrance Test of Central/State Government.

Since the petitioners have admitted 79 students as against the sanctioned

strength of 60 students, therefore, they had violated the AICTE Regulations, 1994 and AICTE Interim Policy Regulations (Annex.R/4) as well as the terms and conditions of the approval granted to them through letter Anex.R/1 dated 20.6.2003. Thus, the impugned order Annex.8 was rightly passed.

3. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

4. Before proceeding further, the law laid down by the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation (supra) and *Islamic Academy of Education and anr. v. State of Karnataka and ors.*,¹ may be referred to and the salient features of these two judgments of the Hon'ble Supreme Court are as follows :-

(i) That on point whether educational institutions are entitled to fix their own fee structure, it was held that there can be no fixing of a rigid fee structure by the Government. Each Institute must have the freedom of fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students.

(ii) That with regard to statutes and regulations governing the fixation of fees, the validity of which have not yet been considered by the Hon'ble Supreme Court, it was directed that in order to give effect to the judgment in the case of T.M.A. Pai Foundation (supra), the respective State Governments/authority concerned shall set up, in each State, a Committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State.

(iii) That standard of education at no cost shall be given a go-by.

(iv) That the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice.

(v) That further, minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non-minority educational institutions are concerned.

(vi) That in case of non-minority professional colleges, a certain percentage of seats can be reserved for admission by the Management. Percentage to be prescribed by the Government according to local needs. For this, same yardstick not to be applied to minority professional colleges. For minority colleges State

must keep in mind the need of that community besides local needs. No hard and fast rule can be laid down. Provision also to be made for poorer and backward sections of society.

(vii) That on mode of filling up the management quota and other seats, it was observed that selection for admission necessarily to be merit based. Merit based selection to be made through common entrance tests. Directions for conduct of common entrance tests and their mode were issued.

The Hon'ble Supreme Court in the judgment, which was delivered on 14th August, 2003, in the case of Islamic Academy of Education (supra) observed that for academic year 2003-04, management quota to be 50% unless high percentage already permitted by interim order of Hon'ble Supreme Court and filled up.

(viii) That it must be clarified that minority professional colleges can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the *inter se* merit among those very students of that community/language cannot be ignored. But, if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by Government agencies.

(ix) That on point how management of both minority and non-minority professional colleges can admit students in the quota allotted to them, a common entrance test was suggested and it means each Institution cannot hold a separate test. Thus, it was held that the Management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. Thus, test by each Institution was totally ruled out.

(x) That minority colleges will be entitled fill up their quota with their own students on the basis of *inter se* merit amongst those students.

(xi) That it is made clear that if any student has been admitted *de hors* merit, penalty can be imposed on that institute and in appropriate cases,

recognition/affiliation may also be withdrawn.

(xii) That it is further made clear that the stipulation for merit based selection is to apply not only at the time of granting recognition/affiliation but also subsequently after the grant of such recognition/affiliation.

(xiii) That although the minorities have a right to establish institutions of their own choice, they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfill the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the University.

(xiv) That minorities, whether based on religion or language, have a fundamental right to establish the administer educational institutions of their own choice. The right under clause (1) of Article 30 is not absolute, and subject to reasonable regulations which *inter alia* may be framed having regard to the public interest and national interest of the country. Regulations can also be framed to prevent mal-administration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality etc.

5. In the light of the above principles laid down by the Hon'ble Supreme Court, the present writ petition is being disposed of.

6. There is no dispute on the point that through Annex.2 and Annex.3, the petitioners were granted approval for opening of the Diploma Course in D- Pharmacy for the Session 2003-2004.

7. A bare perusal of letter Annex.R/1 dated 20.6.2003 filed by the respondent Nos. 1 and 2 along with their reply clearly reveals that the AICTE restricted the strength of the students up to 60 for admission to the petitioners College for Diploma Course in D-Pharmacy for the Sessions 2003-2004. It was further stated in that letter Annex.R/1 :-

(i) That the admission will be made in accordance with Regulations notified by the AICTE vide GSR 476(E) dated 20.5.1994 based on the Hon'ble Supreme Court judgment dated 4.2.1993 with regard to *WP(C) 607 of 1992 in the case of Unni Krishnan JP and Ors. v. State of Andhra Pradesh and others etc.*,² and later judgments. No Management/Institute/Trust or Society shall announce admissions directly under any circumstances. Any action contrary to this

provision taken by the institute will make it liable to be derecognized.

(ii) That further, in the event of infringement/contravention or non-compliance of the norms and standards prescribed by the AICTE during the last approved academic year, the Council shall take further action to withdraw approval to this case for admission during subsequent academic year and the liability arising out of such withdrawal of approval will be solely that of Management/Trust/Society and/or Institutions.

8. There is also no dispute on the point that for admission to the Diploma Course in D-Pharmacy for the Academic Session 2003-2004, the Management quota was 15% as is evident from Interim Policy Regulations (Annex.R/4) where it was stated that the maximum limit of percentage of management seats shall not exceed 15% of sanctioned intake and since in the present case, the sanctioned intake was 60, the Management quota comes to 9 seats.

9. There is also no dispute on the point that as per Interim Policy Regulations (Annex.R/4), all the 60 seats including 9 seats reserved for the management must be filled up through Joint Entrance Test/Common Entrance Test conducted by Central/State Government or University followed by counseling as per present practice. However, the private unaided institutions may fill up the management seats by having their own counseling in an objective and transparent manner taking the students from same merit list prepared on the basis of Joint Entrance Test/Common Entrance Test of Central/State Government.

10. There is also no dispute on the point that the Diploma Course in D- Pharmacy for the Academic Session 2003-2004 started with effect from 1st of July, 2003 and initially, the petitioners' College admitted 30 students including 9 students of management quota of their own choice, taking shelter of the letter Annex.5 dated 21.5.2003 issued by the Secretary, Higher Education, Government of Rajasthan, *Jaipur* addressed to Director, College Education, Rajasthan, *Jaipur*.

11. There is also no dispute on the point that thereafter, through Annex.7, the respondent No. 4 Coordinator (Pre Pharmacy Test), Jai Narain Vyas University, Jodhpur, who conducted the Pre Pharmacy Test, 2003 and counseling, sent a list of 39 students to the petitioners for admission in D-Pharmacy Course for the Academic Session 2003-2004 and these 39 students were admitted by the petitioners.

12. There is also no dispute on the point that thereafter, on 19.7.2003, the respondent No. 4 Coordinator sent a further list of 10 students to the petitioners for admission in

D-Pharmacy Course for the Academic Session 2003-2004 and these 10 students were also admitted by the petitioners.

13. There is also no dispute on the point that prior to giving of admission to 39+10= 49 students, as per the lists sent by the respondent No. 4 Coordinator, the petitioners had already given admission to 30 students including 9 students of management quota on their own choice and thus, the petitioners had given admission to 79 students, though the sanctioned strength of students for admission to D-Pharmacy Course for the Session 2003-2004 was 60.

14. There is also no dispute on the point that out of these 30 students, who were given admission by the petitioners on their own choice, if 9 students of management quota are minus, then there remains only 21 students, whose names do not find place in the merit list prepared by the respondent No. 4 Coordinator after conducting Pre Pharmacy Test, 2003 and counseling.

15. Through impugned order Annex.8 dated 11.9.2003 passed by the Technical Education Department, Government of Rajasthan, *Jaipur* (respondent No. 1), the admissions given by the petitioners above the prescribed limit in the D- Pharmacy Course were cancelled and only those students, who came through Rajasthan Pre-Pharmacy Test, 2003 were found eligible and the Management quota of 9 seats was held to be within 60 seats and therefore, it was directed that names of only 60 candidates be sent and that order Annex.8 has been challenged by the petitioners in this writ petition.

16. It may be stated here that this Court vide order dated 7.11.2003 directed the Secretary In charge of the Pharmacy College in the following manner:-

"The question involved in this writ petition will be looked into by the Secretary In charge of the Pharmacy College. He will hear the petitioners and pass necessary order in accordance with law. A copy of the order will be placed before this Court. The whole exercise will taken up by the State Government within four weeks."

In compliance of the aforesaid order, the Secretary, Technical Education Department, Government of Rajasthan, *Jaipur* examined the matter in detail and passed the order on 6.12.2003 and the same was placed on record on 9.12.2003 and a perusal of that order dated 9.12.2003 reveals that the Secretary, Technical Education Department, Government of Rajasthan, *Jaipur* came to the following conclusion :-

(i) That the management quota was 15% and thus, the petitioners could give admission to only nine students under management quota.

(ii) That the request of the petitioners' College to regularize excess admissions was not acceptable because :-

(a) The petitioners, after receipt of communication from Coordinator, RPPT, should have informed about their interpretation. The excess admissions have been done deliberately and that too when the college is just at the beginning stage.

(b) The students admitted in excess have not been drawn from merit list prepared through Joint Entrance Test.

17. Thus, looking to the entire facts and circumstances just narrated above, in my considered opinion, since as per the Interim Policy Regulations published by AICTE through Notification (Annex.R/4) dated 7th March, 2003, all the 60 seats including 9 seats reserved for Management were to be filled-in as per the Joint Entrance Test/Common Entrance Test conducted by Central/State Government or University followed by counseling, but the petitioners admitted 21 students in D-Pharmacy Diploma Course for the Academic Sessions 2003-2004 on their own choice and their names did not find place in the merit list prepared by the respondent No. 4 Coordinator after holding Pre Pharmacy Test, 2003 and counseling and therefore, in these circumstances, giving of admission by the petitioners to 21 students at their own choice, was in violation of the terms and conditions of the approval granted to them through Annex.R/1, Annex.3 and Annex.4 and also *de hors* the Rules and Interim Policy Regulations (Annex.R/4) and against the law laid down by the Hon'ble Supreme Court in the cases referred to above.

18. So far as the argument that the petitioners were not aware of the law laid down by the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation and ors. (supra) and they admitted 21 students under *bonafide* belief and they were not at fault, is concerned, the same cannot be accepted, as through Interim Policy Regulations published through Notification (Annex.R/4) dated 7th March, 2003, guidelines for admission were issued and in that Interim Policy Regulations (Annex.R/4) it was specifically stated that all the seats including the seats reserved for the management must be filled up through Joint Entrance Test/Common Entrance Test conducted by Central/State Government or University followed by counseling and apart from this, the law laid down by the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation

and ors. (supra) has been mentioned in that Interim Policy Regulations (Annex.R/4).

19. Thus, it is held that out of 30 students, the admissions given by the petitioners to 21 students at their own choice were not legal and valid as these admissions were made by the petitioners in violation of the terms and conditions of the approval granted to them through Annex.R/1, Annex.2 and Annex.3 and also *de hors* the Rules and Interim Policy Regulations (Annex.R/4) and against the law laid down by the Hon'ble Supreme Court in the cases mentioned above.

20. The next point to be considered is whether 21 students, who were given admissions by the petitioners illegally, invalidly and also *de hors* the Rules and Interim Policy Regulations (Annex.R/4) and against the law laid down by the Hon'ble Supreme Court in the cases mentioned above, can be regularized under the garb of clause q at page 43 of the AICTE Hand Book for Approval Process (Academic Year 2003-2004), which has been quoted above, or not.

21. In my considered opinion, it cannot be so done because of the following reasons:-

(i) That had excess admissions would have been given by the petitioners as per the merit list prepared by the respondent No. 4 Coordinator after holding Pre Pharmacy Test, 2003 and counseling, the argument of the petitioners could have been taken into consideration to some extent, but the position is otherwise in the present case as these 21 students were admitted by the petitioners at their own choice and not from the merit list prepared by the respondent No. 4 Coordinator.

Therefore, the petitioners are not entitled to take the benefit of clause q of AICTE Hand Book for Approval Process (Academic Year 2003-2004).

(ii) That in the case of Islamic Academy of Education (supra), the Hon'ble Supreme Court has clearly observed that if it is found that any student has been admitted *de hors* merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

Since in the present case, 21 students were admitted by the petitioners at their own choice and *de hors* the merit, therefore, as rightly submitted by the learned counsel for the respondent Nos. 1 and 2, the present case is a case of penalty and not a case of regularization of 21 students admitted by the petitioners illegally, invalidly and *de hors* the merit list.

Whether penalty can be imposed upon the petitioners' College or not, it is for

the respondents to consider and no direction can be given by this Court in this writ petition under Article 226 of the Constitution of India.

(iii) That in *Maharishi Dayanand University v. M.L.R. Saraswati College of Education*,³ where students were admitted in contravention of statutory provisions, it was suggested by the Hon'ble Supreme Court that in such cases, the courts may evolve a mechanism for awarding damages to the students whose careers are seriously jeopardized by unscrupulous management of colleges/schools which indulge in violation of all rules.

In the present case, this question is left open, but the admissions of 21 students given by the petitioners at their own choice illegally and invalidly cannot be regularized for the reasons stated above and if the students demand damages from the petitioners' College, it is for them to settle this score at their own level and no directions can be issued by this Court in this petition under Article 226 of the Constitution of India.

22. So far as the argument that as per the judgment of the Hon'ble Supreme Court in the case of *Islamic Academy of Education (supra)*, the management quota has been increased upto 50% and therefore, the petitioners were entitled to fill up 50% seats is concerned, the same cannot be accepted as the judgment in the case of *Islamic Academy of Education (supra)* was delivered by the Hon'ble Supreme Court on 14th August, 2003 and the 21 students were admitted by the petitioners at their own choice illegally and invalidly and *de hors* the Rules and Interim Policy Regulations (Annex.R/4) prior to that judgment of the Hon'ble Supreme Court.

23. Before concluding the order, it is made clear that after holding the admissions of 21 students by the petitioners as illegal and invalid, as against the sanctioned strength of 60 students, only 58 students were validly given admissions by the petitioners (49 students as per the lists given by the respondent No. 4 Coordinator and 9 students of management quota) and now there remains two seats to be filled in up by the respondent No. 4 Coordinator and thus, two more students can be sent by the respondent No. 4 Coordinator to the petitioners for admission in D-Pharmacy Diploma Course for the Academic Sessions 2003-2004.

24. For the reason stated above, no interference is called for with the impugned order Annex.8 dated 11.9.2003 passed by the Technical Education Department, Government of *Rajasthan, Jaipur* (respondent No. 1) and this writ petition is liable to be dismissed.

Accordingly, this writ petition filed by the petitioners is dismissed. However, it is made clear that after holding the admissions of 21 students by the petitioners as illegal and invalid, as against the sanctioned strength of 60 students, only 58 students were validly given admissions by the petitioners (49 students as per the lists given by the respondent No. 4 Coordinator and 9 students of management quota) and now there remains two seats to be filled in up by the respondent No. 4 Coordinator and thus, two more students can be sent by the respondent No. 4 Coordinator to the petitioners for admission in D- Pharmacy Diploma Course for the Academic Session 2003-2004.

Petition dismissed.

Cases Referred.

1. 2004(1) SCT 714 (SC): ((2003) 6 SCC 697)
2. 1993(2) SCT 511 (SC)
3. 2000(4) SCT 971 (SC): ((2000)7 SCC 746)