

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 11794 of 2016**

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RADHE SCHOOL OF PHARMACY AND BIO RESEARCH
INSTITUTE....Petitioner(s)

Versus

ADMISSION COMMITTEE FOR PROFESSIONAL COURSES....Respondent(s)

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Appearance:

MR MITUL SHELAT WITH MS.AVNI H PANDYA, ADVOCATE for the
Petitioner(s) No. 1

MS MANISHA LAVKUMAR, LD. GOVERNMENT PLEADER WITH MS AMITA
SHAH, LD. AGP for the Respondent(s) No. 1

MR DIPEN DESAI, ADVOCATE for the Respondent(s) No. 2

MR DEVANG VYAS, LD. ASG for the Respondent(s) No. 3

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 25/07/2016

ORAL ORDER

On 21st July, 2016 the following order was
passed.

"Learned advocate Mr. Mitul Shelat with learned
advocate Ms. Avni Pandya for the petitioner seeks to
join Gujarat Technological University as well as
Pharmacy Council of India as party respondents.

2. Permission to join the said parties as party
respondents is granted, however on condition that on
the next date, having regard to the fixed time-schedule
underway for the admission process, no time shall be
granted to the parties proposed to be joined. They are
permitted to be joined only to ascertain their stand
which shall be taken on the next date even without
filing affidavit-in-reply.

3. Learned advocate for the petitioner is directed to
supply an advance copy of the petition to learned
advocate Mr. Dipen Desai for proposed respondent-

Gujarat Technological University and learned Assistant Solicitor General Mr. Devang Vyas for proposed respondent-Pharmacy Council of India who normally appear for the said parties.

4. Put up on 25th July, 2016. To be taken up at 12:30PM."

1.1 Pursuant to the aforesaid order, learned Assistant Solicitor General Mr.Devang Vyas appeared for the newly added Pharmacy Council of India and represented the said respondent. Similarly, learned advocate Mr.Dipen Desai appeared for Gujarat Technological University stating that he represents the said newly added party.

2. Heard learned advocate Mr.Mitul Shelat for the petitioner, learned Government Pleader Ms.Manisha Lavkumar for the first respondent-Admission Committee for Professional Courses, and learned advocates appearing for the newly added parties as above, for admission of the petition as well as grant of interim relief.

3. The petitioner-Radhe School of Pharmacy & Bio Research is placed under No Admission Zone disallowing it to admit students and to commence degree courses for the Academic Year 2016-17. The petitioner is aggrieved by communication dated 01st July, 2016 of the first respondent-Admission Committee whereby it has taken a stand that since the petitioner institute does not have approval from Pharmacy Council of India for Degree Courses, the Commissioner of Technical Education & Chairman of the Admission Committee has decided to put the petitioner in No

Admission Zone.

3.1 The principal prayer of the petitioner for seeking direction against the first respondent- Admission Committee to include the name of the petitioner institute and grant admissions to the petitioner institute in the counseling for the Academic Year 2016-17 in the Degree Courses.

4. Learned advocate for the petitioner submitted that the petitioner is also governed under the All India Council for Technical Education Act, 1987 and that the All India Council for Technical Education (AICTE), by communication dated 05th April, 2016 addressed to the Principal Secretary, Higher and Technical Education, Government of Gujarat, has granted approval to the petitioner for commencing the courses for the current year. He further submitted that the petitioner has paid necessary fees and the petitioner is also affiliated to the Gujarat Technological University under which the pharmacy courses are run. He further submitted that the petitioner had approval from the Pharmacy Council of India upto academic year 2011-12. It was submitted that the Pharmacy Council of India has permitted those institutes for the purpose of admission, who did not have approval in the last academic year, but have been seeking approval for the current year. It was further submitted that the case of the petitioner institute as well as that of those other institutes stand on the same footing in principle. It was submitted that Section 12 of the Pharmacy Act, 1948 cannot be an

impediment in permitting the petitioner to commence the courses once AICTE has given approval and that the petitioner is also affiliated to the Gujarat Technological University. Learned advocate referred to and relied on provision of the All India Council for Technical Education Act, 1987 to submit on that basis that approval by AICTE as above has already paved the way for the petitioner and the insistence on part of the Admission Committee was not justified, nor the stand on part of the Pharmacy Council was well-taken in law.

4.1 On the other hand, learned Government Pleader vehemently submitted that the petitioner had have not been running the courses since 2011-12; the relaxation is given only to those institutes who were not having approval only for the last year. Once there is no approval from the Pharmacy Council of India, she submitted that the petitioner cannot be allowed to commence the courses. It was submitted that compliance of Section 12, that is approval by the Pharmacy Council of India to the courses of study and examination, cannot be dispensed with. Learned Assistant Solicitor General who appeared for the Pharmacy Council of India adopted the submissions of learned Government Pleader, to reiterate that without the approval of Pharmacy Council of India, petitioner may not be allowed to commence and run Pharmacy Courses. The counsel on behalf of the Gujarat Technological University expressed concern over the interests of the students if the petitioner is given any relief in the petition. He could not dispute that

the petitioner is affiliated to the Gujarat Technological University.

4.2 It is the position stated by the Admission Committee in its affidavit-in-reply that "considering the genuine difficulty faced by the colleges, who had the approval for the past years including for the year 2015-2016, the Committee decided that such institutes which already had an approval of 2015-2016 may be considered for admission for the current 2016-2017 subject to their furnishing of affidavit and undertaking." It is further stated that if such institute do not receive approval for the current academic year, they shall transfer all the students to an approved institute at their own risk and cost. The Committee had stated that it allowed those institute who filed such undertaking and affidavit.

4.3 As against this it is the stand of the petitioner on this aspect that principally, no distinction can be made to discriminate the petitioner who had also for the past years upto 2012, the approval. It is stated by the petitioner on oath in affidavit that the petitioner is ready and willing to furnish the affidavit on the same lines and in similar way to the undertaking given by the colleges who are not granted approval by the Pharmacy Council but whose applications are being considered for being included in the list of the purpose of admission.

5. The pharmacy courses are included in the definition of "Technical Education" under Section 2(3) of the AICTE Act, 1987. The petitioner institute is

'technical institute' as defined under Section 2(45) of the Act. Section 3 of the Act provides for establishment of the Pharmacy Council of India, further provides for inclusion of a representative therein under Section 3(m)(b) of the Act. In the constitution of Pharmacy Council, included are the representative from the Central Advisory Board of Education, Association of Indian Universities, from the Indian society for technical education, the counsel of the Indian Institute of Technology, the Council of Architecture and the National Productive of Council as well as the Chairman, the Universities Grant Commission. Also happens to be the Member is the Director General, Council of Scientific and Industrial Research. Section 10 of the Act mentions the function of the All India Council for technical education. Under Section 10(1)(b), the Council has the powers to co-ordinate the development of technical education in the country in all levels. Under Section 10(1)(d), the Council is empowered to take steps to promote innovations, research and development in the established and new technologies, adoption of new technologies and for over all improvements in the standard of educational processes. It lays down norms and standards for courses, curricular, instructional facilities, staff pattern and qualifications, assessment and examinations etc. under Section 10(1)(i). The power to grant approval for starting new educational institutions, new courses or programmes is under Section sub-clause (i) of sub-section (1) of Section 10, whereas under clause (o), the Council is

empowered to provide guidelines for admissions to students to the technical institutions and universities imparting technical educations.

5.1 In exercise of powers Section 23 the AICTE has framed All India Council for Technical Education (Grant of Approval for Starting new Technical Institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994. The Regulations have been framed for grant of approval for starting the new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes. Regulation 2 relates to grant of approval of the Council for establishment of new technical institutions, grant of approval of the Council for introduction of any course or programme in the technical institutions, grant of approval of the Council for existing intake capacity of seats and for increase in the annual intake capacity of seats in courses and programmes. Regulation 4 prescribes the requirement for grant of approval and Regulation 6 relates to conditions for grant of approval. Section 10 mentions functions of AICTE.

5.2 A Madras High Court decision in **A. Mahesh Vs K.K. College of Pharmacy** being **W. P. No. 4248 of 2001** and others dated 10th April, 2002, relied on behalf of the petitioner, rightly observes thus in paras 10 and 11,

"10. A combined reading of objects and reasons of the

AICTE Act would undoubtedly reveal that the said Act was enacted duly taking into note of the fact that most of the institutions have serious deficiencies in terms of rudimentary infrastructure necessary for imparting proper education and training and also to vest statutory powers to regulate and maintain standards of technical education in the country on the All India Council for Technical Educations which was set up during the year 1945. The said enactment is a special enactment insofar as laying down norms and standards for courses, curricula, physical and instructional facilities, staff pattern and other qualifications, quality assessment and examinations as well as for grant of approval for starting new technical institutions and for introduction of new courses of programmes in consultation with agencies concerned.

11. An analysis of both the provisions of the Pharmacy Act and the AICTE Act would lead to a definite conclusion that while the Pharmacy Act is an Act occupying the field for regulating the profession of pharmacy, the AICTE Act is an Act enacted with a view to proper planning and co-coordinated development of the technical education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in technical educational system and for matters concerned therewith."

6. What falls for consideration of the Court and what was debated in the rival submissions was whether Section 12 of the Pharmacy Act, 1948 would prevail over the All India Council for Technical Institute Act, 1987 or that AICTE's approval to the courses would have a primacy over Section 12 of the Pharmacy Act, 1948. The said Act enacted in the year 1948, appears to have been for making provisions for the regulation of profession and practice of Pharmacy. The Pharmacy Council of India is constituted under this Act. The AICTE was set up in the year 1945 by a Government Resolution as an expert-body. The AICTE Act of 1987 is enacted to secure coordinated development of technical education throughout the country. Both the Acts prima facie occupy the same sphere. When two

Central statutes occupy the same field, their working will have to be harmonised. In absence of possibility of harmony, it is the later Act which will prevail, as, by enacting the Act on the same subject matter, the Parliament can be said to have evinced its intention to displace the prevalence of provisions of the previous Act. *Prima facie* it is possible to apply the said principle in the present case.

6.1 In **Gandhi College of Pharmacy Vs All India Council of Technical Education [AIR 1995 Punjab & Haryana 315]**, the Punjab & Haryana High Court the very issue was addressed as to whether Pharmacy Council of India or All India Council for Technical Education, after coming into force of the AICTE Act, 1987, has power to approve the courses, in that case two years Diploma Course of Pharmacy conducted by the said petitioner-Gandhi College of Pharmacy.

6.1.1 This court is in complete agreement with the following observations of the Punjab & Haryana High Court, to endorse to the view that it is the AICTE Act of 1987 which would have a primacy over the Pharmacy Act, 1948. In paragraph 11, it is observed,

"Article 372 of the Constitution provides that notwithstanding the repeal by the Constitution of the enactments referred to in Art. 395, all the laws that were in force in the territory of India immediately before the commencement of the Constitution shall continue to remain in force until altered or repealed or amended by a competent Legislature or other competent authority. The 1948 Act is undoubtedly an existing law which was in force in the territory of India prior to the commencement of the Constitution. This law was thus to continue to operate till it was altered or repealed or amended by a competent Legislature. Parliament in exercise of its powers under

Entry-66 of List-I (Union List) has enacted the 1987 Act. As already noticed above, this Act covers same field which was earlier covered by the 1948 Act, namely, to lay down norms and standards for studies in the field of pharmacy. Therefore, in terms of Art.372 of the Constitution, the 1987 Act to the extent it covers the same field as covered by the existing law, i.e., the 1948 Act, will prevail and the provisions of the 1948 Act to that extent stand repealed/ altered. Alteration, repeal or amendment contemplated by Art. 372 of the Constitution may be express, i.e., the existing law may be expressly altered, repealed or amended by a competent Legislature. An existing law may also be modified by necessary implication and this can be done even by a separate enactment as in the present case. When two Acts are inconsistent or repugnant to each other, the existing law will be deemed to have been altered, repealed or amended by the later law enacted by the competent Legislature. Even when there is no repugnancy or inconsistency between the two enactments, the later law enacted by the competent Legislature will prevail provided that law covers the same field as is covered by the existing law since it is last expression of the will of the Legislature that must prevail."

6.1.2 In paragraph 12, it was further stated by the High Court,

"Looking at the background in which the 1987 Act was enacted, the object of Parliament was to co-ordinate and determine the standards of education in technical institutions including that of pharmacy in the country and it was intended that all technical institutions including the college should be governed by its provisions. The view that I am taking finds support from a Division Bench judgment of Madras High Court in Adhi-yaman Educational and Research Institutions v. State of Tamil Nadu, AIR 1991 Madras 246, which has since been approved by the Apex Court in (1995) 3 JT (SC) 136 : (1995 AIR SCW 2179).

It must, therefore, be held that the provisions of the 1987 Act govern the college and the provisions of the 1948 Act stand repealed and altered to the extent they provide for the minimum standard of education and approval of courses and examinations in pharmacy. In this view of the matter, AlCTE was well within its rights to grant approval to the college and was also competent to lay down the conditions enumerated in the communication dated 7-1-1994 (Annexure P5 with the writ petition)."

6.2 Now from the facts of the case and on the submission of learned counsel appearing for the parties, aspects which emerged undisputed, are (i) The petitioner had approval from the Pharmacy Council of India upto 2011-12; (ii) The petitioner is affiliated to the Gujarat Technological University and fees paid by it for commencement of courses for the current Academic Year has been accepted by the Pharmacy Council of India; (iii) it was uncontrovertedly pointed out that there is no formal rejection of the application of the petitioner by the Pharmacy Council of India; (iv) There is no order of withdrawal under Section 13(1) of the Pharmacy Act, 1948 by the Pharmacy Council of India much less approval is finally withdrawn under Section 13; (v) It could also not to be controverted when it was pointed out on behalf of the petitioner that Pharmacy Council of India has not advised in writing to the Admission Committee not to make admissions.

6.3 In relation to the issue of intake capacity of students prescribed by the AICTS as against cleared by the Pharmacy Council of India, the very question as to whether prescription and approval by the AICTE would prevail or the Pharmacy Council of India will have its final say, has arisen before several High Courts. It was pointed out that several such petitions by different High Courts have been admitted and interim orders are passed being (i) Order dated 27th June, 2016 in Writ Petition No.6702 of 2016 passed by Aurangabad Bench of Bombay High Court; (ii) Order dated 27th June, 2016 in Writ Petition No.6540 of 2016

and other cognate matters passed by Aurangabad Bench of Bombay High Court; (iii) Order dated 23rd June, 2016 in Writ Petition No.6082 of 2016 and other cognate matters passed by Aurangabad Bench of Bombay High Court; (iv) Order dated 08th October, 2015 in Writ Petition No.4650 of 2014 passed by Aurangabad Bench of Bombay High Court; (v) Order dated 21st July, 2015 in Writ Petition No.6250 of 2015 passed by Aurangabad Bench of Bombay High Court; (vi) Order dated 06th July, 2015 in Writ Petition No.4917 of 2014 passed by Aurangabad Bench of Bombay High Court; (vii) Order dated 14th May, 2015 in Writ Petition No.8556 of 2015 passed by Kolkata High Court; (viii) Order dated 09th March, 2015 in Writ Petition No.5230 of 2015 passed by Andhra Pradesh High Court; (ix) Order dated 11th July, 2014 in Civil Application No.1532 of 2014 and other cognate matters passed by Bombay High Court; (x) Order dated 18th June, 2014 in Writ Petition No.4650 of 2014 passed by Aurangabad Bench of Bombay High Court; (xi) Order dated 09th May, 2014 in Special Leave Petition No.7277 of 2014 passed by the Supreme Court. The same issue is also arising in Special Civil Application No.9506 of 2016 before this Court.

6.3.1 Before the Apex Court also, **Writ Petition (Civil) No.372 of 2014** in case of **Indira Bahuuddeshiya Shik. Sanstha Vs Pharmacy Council of India** is pending involving identical question and the Supreme Court has passed interim order permitting admission of the students on provisional basis. It appears that in the aforesaid matter, Interim Application was filed subsequently, but the Supreme

Court refused to vary the order and confirmed the same.

6.4 Learned advocates for the first respondent- Admission Committee as well as the Pharmacy Council of India relied on decision of this Court in **Rahul Kumar Jasvantlal Panchal Vs State of Gujarat [2012 (5) GLR 4413]** to harp that Section 12 of the Pharmacy Act, 1948 has to be complied with beforehand and the same will have prevalence over the approval or clearance granted by the AICTE. In view of the above-referred decision of Madras High Court in **A. Mahesh (supra)** and of the Punjab & Haryana High Court in **Gandhi College of Pharmacy (supra)**, as well as in light of the issue having been pending before different High Courts as well as before the Apex Court about the prevalence and primacy of provisions of the AICTE Act, 1987 vis-a-vis that of the Pharmacy Act, 1948, the decision in **Rahul Kumar Jasvantlal Panchal (supra)** may have to be tested further and finally on the anvil of scrutiny.

6.5 For the above reasons and considerations coming out emphatically from the facts and evinced from the position of law, the stand of the respondent is incapable of being countenanced that without approval from the Pharmacy Council of India, the petitioner cannot be allowed to start the courses, when the All India Council for Technical Education, has given approval. The approving by the Pharmacy Council of India to the courses to be started by the petitioner cannot be perceived or taken as a condition

precedent. It is also not possible to accept prima facie that Section 12 of the Pharmacy Act 1948 has a swaying and overriding effect against the provisions of All India Council for Technical Education Act, 1987. On the contrary having regard to the totality of the wholesome provisions of the AICTE Act, which is statute in later point of time, the position clearly appears to be otherwise to be threshed out finally.

7. For all the aforesaid reasons, a strong prima facie case is made out. The petition requires consideration, therefore Rule, returnable on 26th September, 2016.

The petitioner deserves to be granted following interim relief.

(i) The respondents shall allow admissions to the petitioner institute treating approval granted by All India Council for Technical Education as having primacy over the stand of the Pharmacy Council of India;

(ii) Admission which may be given by the petitioner shall be treated as provisional. Students, who may be admitted, shall be intimated about the provisionality of the admission.

(iii) At the time of giving admission, the students shall be intimated that their admission would be subject to the outcome of the present petition so that they may know about the present petition as well as pendency thereof;

(iv) Pharmacy Council of India is not precluded from making such inquiry as it seeks by exercising its powers under Section 12 of the Act and thereby consider the question of approval to the petitioner during the pendency of the petition. However, any such decision taken adverse to the petitioner, shall be subject to final outcome of the petition.

(v) The petitioner shall file necessary undertaking/affidavit that it will abide by the prescriptions of All India Council for Technical Educations, and if prescribed further by the Pharmacy Council of India.

(N.V.ANJARIA, J.)

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