

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19063 of 2021

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A and E College of Pharmacy Baluahi, District- Samastipur through its
Chairman namely, Ashok Kumar (Male), Aged about 47 Years, Son of Shri
Rajendra Ray, Resident of Mohalla- S.D.O. Road, Hajipur, P.S.- Hajipur,
District- Vaishali ... Petitioner

Versus

1. Lalit Narayan Mithila University, Darbhanga through its Registrar.
 2. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.
 3. The Registrar, Lalit Narayan Mithila University, Darbhanga.
 4. The Examination Controller, Lalit Narayan Mithila University, Darbhanga.
- ... Respondents

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Appearance :

For the Petitioner	:	Mr. P.K. Shahi, Sr. Adv. With Mr. Arun Kumar, Adv.
For the State	:	Mr. Subhash Prasad Singh, GA III with Mr. Shiv Kumar, AC to GA III
For the University	:	Mr. Md. Nadim Seraj, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

RESERVED JUDGMENT

Date : 31-03-2022

Heard the parties.

2. Brief facts for adjudication of this case are that the petitioner is a Trust registered under the Indian Trust Act, 1882, which has established an institution, for imparting Diploma in Pharmacy as well as Bachelor in Pharmacy courses, by the name of A & E College of Pharmacy, Baluahi, district Samastipur. Approval from Pharmacy Council of India and AICTE was granted to the petitioner institution for conducting Bachelor of Pharmacy



courses (hereinafter referred to as the 'B' Pharm) vide letter of approval dated 10th of June, 2019. The letter also mentions of granting approval for Diploma in Pharmacy course for the session 2019-20 and allowing 60 admissions thereto. Approval for 2019 to 2023 has also been granted by Pharmacy Council of India allowing intake of 60 students which has subsequently been enhanced to 100 students for the session 2020-21.

3. The Lalit Narayan Mithila University, Darbhanga (hereinafter referred to as, 'the L.N.M.U.') had also granted affiliation to the institute. AICTE has also granted approval for the session 2019-20 and 202-21 vide their letter dated 25th June, 2021.

4. The State Government has after conducting inspection of the institute granted No Objection Certificate (NOC) vide its letter dated 09.12.1990 and 25.11.2020 for 60 seats and thereafter for 100 seats vide its letter dated 28th June, 2021. The University granted affiliation vide its letter dated 13.01.2020 for the session 2019-23, subsequent approval applications are also pending.

5. The petitioner has preferred this writ petition as the respondent-University has not taken any decision to promote students due to pandemic of Covid-19 nor it has taken a decision to hold examinations. The petitioner has thus approached this Court seeking direction to the respondent L.N.M.U to hold



examinations of the students of 'B' Pharm course of academic session 2019-23 (first year) and 2020-24 (first year) or in the alternative to direct the respondent-University to take a decision to promote the students of the aforesaid sessions, on account of pandemic of Covid-19.

6. Learned counsel of the petitioner has submitted that the respondent-University is bound to hold examination of students of 'B' Pharm as the petitioner college holds recognition and approval from AICTE, Pharmacy Council of India as well as NOC from State Government. Affiliation from L.N.M.U. has also been granted, thus there is no cogent reasons for not conducting examination/taking decision to promote the students.

7. Learned counsel further submits that the University is the examining body and their action in not holding examination or promoting the students would spoil the future career of the students and also bring the college in disrepute. It is stated that the students studying in the institute have been placed in the state of frenzy and anxiety as their examinations are not being conducted by the University.

8. Learned counsel for the petitioner submits that the Supreme Court in the case of Pharmacy Council of India Vrs. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy



& Ors., reported in (2021) 10 SCC 657 has held that the Pharmacy Council of India would be the primary body for all purposes which would include increase in intake capacity, recognition, approval of education course as per the Pharmacy Act, 1948. In the said circumstances the reasons coming forwarded by the University for not conducting the examination are wholly unjustified.

9. Per contra, learned counsel appearing for the University has submitted that so far as the University is concerned, it can hold examinations only on the basis of Regulation. It has already transmitted the draft Ordinance and Regulations to the Chancellor of Universities for four years 'B' Pharm course vide its letter dated 13.05.2020 and then 06.07.2021 and has also sent letter to the Chairman, RUSA, Patna, to make request for approval of the draft Ordinance and Regulations so that the examination can be conducted without any delay. Learned counsel had during the course of argument handed over a letter dated 25th June, 2021, sent to them by the Deputy Secretary, Education Department and submitted that the State Government has by the said letter disallowed the University to conduct the examination.

10. I have considered the submissions.

11. This Court finds that the Pharmacy Council of India vide its notification dated 10th December, 2014, has laid down the



Regulations known as Bachelor of Pharmacy 'B' Pharm Course Regulations, 2014. The syllabus of the course is to be prescribed by the Pharmacy Council of India from time to time. Regulations 10 to 16 provide the method and manner of examination itself. The mode of examination has been laid down under the said Regulation which requires examination to be conducted in three stages theory examination of three hours duration each, practical examination of four hours duration which would also include a viva voce (oral examination). The Regulations also provide award of sessional marks and maintenance of records. The minimum of marks for passing examination has also been provided and the eligibility criteria for promotion to the next year has also been provided. Rule 15 is as under :

“15 : Approval of examinations – Examinations mentioned in regulations 10 to 12 and 14 shall be held by the examining authority 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 – (B) to these regulations.”

12. Thus, it is apparent that the University has to only follow the Regulations as laid by the Pharmacy Council of India.



So far as the 'B' Pharm examination are concerned, as the Pharmacy Council of India is the statutory body formed under the Central Act, Regulations framed by them could be field. The ground taken by the University of their being in process of approval of their draft Regulations for not conducting examinations is thus found to be wholly frivolous and this Court shall not allow the University to play with the lives of the students who have been admitted in the year 2019 and 2020.

13. Delay in conducting examination has a direct as well as cast cascading effect on the future career of the students. The inaction on the part of the University would cause discrimination with the students as other Universities in India have conducted examinations or promoted the students, directly during Covid-19 pandemic, merely on account of the laxedicical approach of the L.N.M.U. the students of the institution would be deprived for applying for future examinations or for service as their entire course has been delayed. After the first year examination are conducted the students would naturally have to undergo studies for the second year. Those who are admitted in 2019-20 and 2020-21 have already completed two years while even one year of their examinations has not been concluded. Such action is found to be illegal and arbitrary. University has to put its house in order and



be abreast with the other Universities in the country. It is informed that the Regulations framed by Aryabhat Knowledge University, which is also State-University of Bihar, have already come into force. The said Regulations would of-course be in-consonance with the Regulations of 2014 (supra) laid down by Pharmacy Council of India. The course of studies has also been already prescribed. Thus, this Court does not find any difficulty in directing the University to take steps to conduct the examination of the students in terms of the schedule as laid by the Pharmacy Council of India known as the Bachelor of Pharmacy 'B' Pharm course Regulation, 2014. If there is any area of doubt with regard to conducting of examination, the University can always adopt the existing Regulations of Aryabhat Knowledge University and sister University of Bihar.

14. Considering the aforesaid and taking into consideration that the institute stands duly recognized from the required bodies and has also been granted NOC by the State Government there is no occasion for the State Government to further interfere as it is the Pharmacy Council of India alone which can recognize or de-recognize the institute in (2020) 10 SCC 657 (supra)

“12.5 : Thus, considering the various provisions of the Pharmacy Act and the regulations made therein, it can be said that the Pharmacy Act is a complete code in itself in



the subject of pharmacy. PCI has been constituted as a body empowered to regulate the education and profession of pharmacy in India. It cannot be disputed that the subject of pharmacy is a special and not a general subject. From the relevant provisions of the Pharmacy Act, more particularly, the provisions referred to hereinabove, the Pharmacy Act exclusive covers all areas inclusive of approval course, laying down course content, eligibility conditions for students as well as teachers, evaluation standards of examination, grant of registration, entry of higher qualification in the same discipline, taking action for infamous conduct, etc. It also contains a penal provision. Thus, the legislative intent in enacting the Pharmacy Act seems to be to ensure that there is seamless regulation of the profession. To carry out the objective and purpose for enacting the Pharmacy Act, the legislature has established under the statute the autonomous statutory authority i.e. Pharmacy Council of India. Thus it can be said that in the field of pharmacy, the Pharmacy Act is a special law.”

15. In view of above it is directed that the University shall take steps to decide whether to promote the petitioner directly or to conduct an examination. If it takes a decision to promote the petitioner directly, approval from the Pharmacy Council of India shall be taken. If the University takes a decision to conduct an examination, it is directed that the examination shall be conducted in terms of the Schedule laid by the Pharmacy Council of India



under Regulations of 2014 and the Regulations of Aryabhat Knowledge University may be adopted for the purpose of conducting of examination. Decision as aforesaid shall be taken by the University within a period of 15 days from today, the Schedule of examinations, if conducted, shall be laid down to be conducted within a period of two months.

16. The writ petition is accordingly allowed.

(Sanjeev Prakash Sharma, J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	10.03.2022
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