

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

(Through Video Conferencing)

Reserved On: 24.11.2020

Pronounced On: 27.11.2020.

WP (C) No. 3113/2019
CM No. 6442/2019, CM No. 6677/2020 & CM No. 6678/2020 in
CPOWP No. 110/2017
OWP No. 1105/2017
CM no. 4356/2020, CM No. 4357/2020 & IA No. 01/2017
OWP No. 1124/2018
IA No. 01/2018
OWP No. 2692/2018
IA No. 01/2018, CM No. 1966/2019 [1/2019]
& CM No. 3297/2019 [2/2019]

Devi Lallayogeshwari Trust

.....Petitioner(s)

Through: -

Mr. Ankush Manhas, Advocate in WP(c) No. 3113/2019

Mr. K. S. Johal, Sr. Advocate with

*Mr. Karman Singh Johal, Advocate in OWP Nos. 1105/2017, 1124/2018 &
2692/2018*

V/s

State of Jammu and Kashmir Others

.....Respondent(s)

Through: -

*Mr. D. S. Chouchan, Advocate for respondents 1 to 3 in OWP Nos. 1105/217,
2692/2018 & 1124/2018.*

*Mr. Ajay Abrol, Advocate for respondents 3, 4 & 5 in WP(c) No. 3113/2019 and
for respondent No. 4 in OWP No. 1105/2017.*

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

ORDER

(A) WP (C) No. 3113/2019

In this petition, the petitioner implores for the following reliefs: -

1. IN THE NATURE OF CERTIORARI quashing the order issued by respondent No. 2 under his No. CDC/2018/4853-60 dated 25.01.2018 rejecting the extension of affiliation of the petitioner College for the

session 2017-2018 for imparting instructions in B. Pharmacy course 2018-2019.

2. IN THE NATURE OF CERTIORARI quashing the order No. CDC/2019/8328-29 dated 22.2.2019 issued by respondent No. 5 by virtue of which the admission for the current session has been denied.
3. IN THE NATURE OF MANDAMUS commanding the respondents to grant/ extend affiliation to the petitioner college for imparting instructions in B. Pharmacy course for the current session.
4. IN THE NATURE OF MANDAMUS commanding the respondents to allow petitioner college to admit students uninterruptedly till such time the respondent /state determines the applicability of the AICTE for pharmacy in the state of J&K.
5. IN THE NATURE OF MANDAMUS commanding the respondents 4 to 7 to treat the petitioner at par with the School of Architecture MAM College Jammu and other similarly situated Institutions in the State of J&K for the purposes of affiliation by accepting the undertaking and permitting the admission of the students for the current session and remove the discrimination on the same analogy as has been done in the case of other similar Institutions, on the basis of clearance of Expert Inspection Committee of AICTE as provided in the communication of Deputy Secretary to Government of J&K, Higher Education Department under his No. 11E/Gen/Course/2018/807 dated 14.12.2018.
6. IN THE NATURE OF MANDAMUS commanding that respondent State and BOPEE be directed to issue notification for selection of candidates for Pharmacy

course within a time frame and forward selection list of candidates to the college and the University.

7. Any other writ, direction or order deemed appropriate and fit in the circumstances of the case may also be issued in favour of the petitioner and against the respondents.

(B) OWP No. 1105/2017

In this petition, petitioner seeks following reliefs: -

It is, therefore, respectfully prayed that for the reasons stated hereinabove and those to be urged at the time of hearing, by issuing an appropriate writ, direction or order in the nature of Certiorari:

The order No. NWRO/AICTE/PHCP-HP/1-2837237371 dated 05/07/2017 passed by respondent No. 1 to 4, be quashed.

AND

By issuance of further appropriate writ, direction or order in the nature of writ of Mandamus the respondents commanded not to enforce/ give effect to the order dated 05.07.2017 against the interests of the petitioner.

AND

By issuance of further appropriate writ, direction or order in the nature of Mandamus; the respondent No. 5 (University of Jammu, through its Registrar) commanded to initiate process for admission for the Session 2017-18 for the petitioner institute.

WITH

Such other additional or alternative order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner institute.

(C) (OWP) No. 1124/2018

In this petition, petitioner seeks following relief: -

It is, therefore, respectfully prayed that for the reasons stated hereinabove and those to be urged at the time of hearing, by issuing an appropriate writ, direction or order in the nature of Certiorari;

The decision taken by the respondents and communicated vide communication No. AICTE/NWRO/AB/ PHCPPS-J&K/103673009231 dated 27.03.2018 asking the petitioner to comply with the deficiencies communicated to the petitioner-Institute vide Councils Speaking Order No. NWRO/AICTE/PHCP-HP/1-2837237371 dated 05.07.2017 be quashed.

AND

By issuance of further appropriate writ, direction or order in the nature of writ of Prohibition, respondents be commanded not to enforce the decision as communicated vide communication dated 27.03.2018 (supra) against the petitioner.

AND

By issuance of further appropriate writ, direction or order in the nature of Mandamus; the respondents be commanded not to give effect to the communication dated 27.03.2018

WITH

Such other additional or alternative order as this Hon'ble Court deems fit and proper in the fact and circumstances of the case may also be passed in favour of the petitioner Institute.

(D) OWP No. 2692/2018

In this petition, petitioner seeks following relief: -

It is, therefore, respectfully prayed that for the reasons stated hereinabove and those to be urged at the time of hearing,

by issuing an appropriate writ, direction or order in the nature of Certiorari;

The impugned Final letter of Rejection issued by respondent No. 1 under F.No.North-West/2018/1-3673009231-LOR dated 30.04.2018 be quashed.

AND

By issuance of further appropriate writ , direction or order in the nature of writ of Prohibition, respondents be restrained from enforcing the decision afore stated communicated vide communication impugned dated 30.04.2018.

AND

By issuance of further appropriate writ, direction or order in the nature of Mandamus: the respondents be commanded:

- (i) Not to give effect to the communication impugned dated 30.4.2018 i.e. Final Letter of Rejection.
- (ii) To consider and dispose of the representation made by the petitioner to the respondent No. 5 under No. PHCT/18/94 dated 4.9.2018.

WITH

Such other additional or alternative order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner institute.

1. The primary and fundamental issues involved in these petitions relate to the actions taken by the respondents against the petitioner institutes either upon the instructions/ directions of All India Council for Technical Education, (hereinafter for short 'the AICTE') under the All India Council for Technical Education Act, 1987 (hereinafter for short

‘the Act of 1987’), the Government of Jammu and Kashmir or the University of Jammu.

2. During the pendency of the instant petitions, CM No. 2913/2020 in WP (C) No. 3113/2019 came to be filed by the petitioner, therein seeking pre-poning of the date fixed in the petition, on the ground that the controversy involved in the petitions stands resolved by the Apex court vide judgement dated 05.03.2020 passed in case titled as **“Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trust Vidarbha Institute of Pharmacy & Ors”** upholding the primacy of Pharmacy Act (1948) over AICTE Act of 1987.
3. Another application being CM No. 6677/2020 in WP (C) No. 3113/2019 came to be filed by the respondent University seeking therein for placing on record an order issued by it where under temporary affiliation has been accorded to the petitioner Institute for the session 2020-21 with intake of 60 seats as approved by Pharmacy Council of India stating therein that the controversy as to whether approval of AICTE or the Pharmacy Council under Pharmacy Act is required for B. Pharmacy Course was set at rest by the Hon’ble Supreme Court vide its common judgement dated March 05, 2020, passed in number of petitions, lead case being **“Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trusts, etc.”**
4. Another application being CM No. 4356/2020 in OWP No. 1105/2017 also came to be filed by the petitioner therein praying for a direction to respondent No. 4 University for initiating the process for admission

for B. Pharmacy courses for the sessions 2019-20 and 2020-21 itself or through Board of Professional Entrance Examination (BOPEE), in view of the law enunciated by the Supreme Court in case titled as **“Pharmacy Council of India Vs. Dr. S. K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Ors.,”** decided on 05.03.2020.

5. Objections have been filed in opposition to the said CM No. 4356/2020 by the respondent University where under it is stated that the writ petitions of the petitioners have been rendered infructuous and that the relief as prayed for in the application cannot be granted to the petitioner against respondent No. 4 University, as the University has nothing to do with the process of admission and that the role of the University is granting affiliation and conducting examinations of the students admitted in the Colleges affiliated to the University and in this regard Government has issued SRO 505 dated 20.08.2019 wherein it is provided that admission to M.Sc/ B.Sc Nursing, Post Basic B.Sc Nursing, B. Pharmacy Courses shall be made in the Government and Private Institutions in centralized manner through the Board of Professional Entrance Examinations. It is being further stated in the objections that the petitioner College had not been granted permission by the Higher Education Department for the session 2020-21 and instead had been permitted for the session 2019-20 and that the college had been granted affiliation by the University for the session 2020-21 vide order No. CDC/2020/2703-2711 dated

11.11.2020 subject to furnishing NOC/permission of the Government of Jammu and Kashmir

6. Earlier these matters came up for consideration on 05.10.2020 and 06.08.2020. Mr. D. S. Chouhan learned counsel for AICTE stated that the role of AICTE in the matter is over and that in the light of Apex court judgement passed in **“Pharmacy Council of India”** supra, the petitions, have been rendered infructuous. Counsel for the petitioners as well reiterated that the controversy involved in the petitions has been set at rest in view of the above judgement of the Apex court and thus the petitions have been rendered infructuous.
7. Mr. Johal learned appearing counsel for the petitioner in OWP Nos. 1105/2017, 1124/2018 & 2692/2018, however, would submit that notwithstanding of the petition having become infructuous, the petitioner institution yet is entitled to reliefs as have been prayed in CM No. 4356/2020 where under a direction has been sought against the respondent University to initiate the process of admission for B. Pharmacy courses for the session 2020-21 either itself or through Board of Professional Entrance Examinations (BOPEE), in view of the position of law enunciated by Apex court in **“Pharmacy Council of India”** supra case and to allot students to the petitioner institute for admission for the sessions 2019-20, 2020-21 without any further delay.
8. Mr. Abrol learned counsel for the respondent University controverted the contentions of Mr. Johal in line with his objections filed in

opposition to the CM stating that the reliefs as have been sought in the CM cannot be granted on the premise that since the main petitions have been rendered infructuous and more so, in view of the fact that the Board of Professional Entrance Examinations is not a party to the petition as admissions are to be undertaken by the Board of Professional Entrance Examinations not by the University and further that the petitioner Institute is not possessed of permission from the Higher Education Department of the Government for the sessions 2020-21.

9. **Heard learned counsel for the parties and perused the record.**
10. Indisputably the issues raised in all the petitions related to AICTE, its role in the establishment and running of the colleges /institutions and conducting of courses thereof and same stands resolved and settled by the Apex court in **“Pharmacy Council of India v. Dr. S.K.Toshniwal Educational Trusts Vidarbha Institute of Pharmacy reported in 2020 SCC Online SC 296”**, supra case, wherein at para 77, it has been noticed as under: -

“77. Applying the law laid down by this Court in the aforesaid decisions and as observed hereinabove, the Pharmacy Act is a Special Act in the field of pharmacy and it is a complete code in itself in the field of pharmacy, the Pharmacy Act shall prevail over the AICTE Act which, as observed hereinabove, is a general statute dealing with technical education/ institutions. Therefore, the submission on behalf of AICTE and/or concerned educational institutions that the AICTE Act is a subsequent law and in the definition of “technical

education” it includes the “pharmacy” and therefore it can be said to be an “implied repeal”, cannot be accepted. At his stage, it is required to be noted that as such in the AICTE Act there is no specific repeal of the Pharmacy Act, more particularly when, as observed hereinabove, the Pharmacy Act is a Special Act and the subsequent enactment of AICTE Act is general and therefore the Pharmacy Act being a Special Act must prevail. Apart from that, with regard to several aspects, there is no provision made in AICTE Act which are exclusively within the domain of PCI. Thus, it cannot be accepted that there is ‘implied repeal’ of the Pharmacy Act.”

11. In view of above nothing survives for adjudication in the writ petitions in hand, as such, are **dismissed** as having been rendered infructuous along with all connected CM(s), including CPOWP No. 110/2017 except CM no. 4356/2020 which is being dealt with hereunder separately: -

CM No. 4356/2020

12. Perusal of CM in hand reveals that the petitioner/ applicant seeks and prays for grant of reliefs fundamentally against respondent University qua initiation of admission process for B. Pharmacy Courses for the sessions 2020-21 and consequent allocation of the students to the petitioner institute for the sessions 2019-20 and 2020-21.
13. Having regard to the aforesaid position and keeping in mind the objections of the respondent University, it is manifest that the reliefs sought in the application are beyond the scope of the reliefs which had been prayed in the writ petitions, as such, the reliefs are incapable of

being granted to the petitioner/ applicant in the instant CM more so, in view of the fact that the writ petitions have been rendered infructuous. This court, however, refrains from making any observation or expressing any opinion qua the merits upon on which the said reliefs are being sought by the applicant in the CM, lest it may prejudice the rights of the parties in general and of the applicant Institute in particular.

14. Application in hand thus also entails dismissal and is, accordingly, **dismissed.**

Javed Iqbal Wani)
Judge

Jammu

November, 27th 2020

"Ishaq"

Whether the Order is speaking?
Whether the Order is reportable?

Yes/No.
Yes/ No.