2022 INSC 965

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 6681 OF 2022
[Arising out of Special Leave Petition (Civil) No.19671 of 2021]

PHARMACY COUNCIL OF INDIA ...APPELLANT(S)

VERSUS

RAJEEV COLLEGE OF PHARMACY AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 6682-6683 OF 2022
[Arising out of Special Leave Petition (Civil) Nos.1387-1388 of 2022]

WRIT PETITION (CIVIL) NO.564 OF 2022

WRIT PETITION (CIVIL) NO.565 OF 2022

CIVIL APPEAL NOS. 6684-6685 OF 2022
[Arising out of Special Leave Petition (Civil) Nos.14295-14296 of 2021]

CIVIL APPEAL NO. 6686 OF 2022
[Arising out of Special Leave Petition (Civil) No.1050 of 2022]

CIVIL APPEAL NO. 6687 OF 2022
[Arising out of Special Leave Petition (Civil) No.1887 of 2022]

CIVIL APPEAL NO. 6688 OF 2022
[Arising out of Special Leave Petition (Civil) No.2570 of 2022]

CIVIL APPEAL NO. 6690 OF 2022
[Arising out of Special Leave Petition (Civil) No.4862 of 2022]

CIVIL APPEAL NO. 6689 OF 2022
[Arising out of Special Leave Petition (Civil) No.5673 of 2022]

WRIT PETITION (CIVIL) NO.406 OF 2022

CIVIL APPEAL NO. 6691 OF 2022
[Arising out of Special Leave Petition (Civil) No.13792 of 2022]

WRIT PETITION (CIVIL) NO.563 OF 2022

JUDGMENT

B.R. GAVAI, J.

1. Leave granted in all the Special Leave Petitions.

2. The appeals filed by the Pharmacy Council of India (hereinafter referred to as "PCI") mainly challenge the (i) judgments dated 9th November 2021, passed by the Division Bench of the High Court of Karnataka at Bengaluru in Writ Appeal No. 746-748 of 2020; (ii) judgment dated 7th March 2022, passed by the learned Single Judge of the High Court of Delhi at New Delhi in Writ Petition (Civil) No.175 of 2021; and (iii) judgment dated 22nd April 2022, passed by the learned Single Judge of the High Court of Chhattisgarh at Bilaspur in Writ Petition (Civil) No.3766 of 2021. Several interim orders passed by these Courts during the pendency of these matters are also subject to challenge in some of the appeals. They are also being disposed of by the present judgment.

3. By the said judgments and orders, the aforesaid three High Courts of Karnataka, Delhi and Chhattisgarh had allowed the writ petitions filed by the respondents-institutions, which were, in turn, filed challenging the Resolutions/communications of the appellant-PCI dated 17th

July 2019 and 9th September 2019 and dismissed the Writ Appeals filed by the PCI. Vide Resolution/Communication dated 17th July 2019, the appellant-PCI had resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree courses in pharmacy for a period of five years beginning from the Academic Year 2020-2021. Vide Resolution/communication dated 9th September 2019, the aforesaid moratorium was modified, thereby exempting its application to (i) Government Institutions; (ii) Institutions in North Eastern region; and (iii) States/Union Territories where the number of institutions offering D. Pharm and B. Pharm courses (both combined) is less than 50. Additionally, vide the said Resolution/communication dated 9th September 2019, the institutions which had applied for opening colleges offering D.Pharm and/or B. Pharm courses for 2019-2020 academic session were allowed to apply for conducting diploma as well as degree courses in Academic Session 2020-2021 and existing approved pharmacy institutions were allowed

to increase the intake capacity as per PCI norms and/or to start additional pharmacy course(s).

4. The writ petitions filed by the Institutions before the three High Courts challenged the validity of the said moratorium and also prayed for a direction to be issued to the appellant-PCI to grant approval for opening new pharmacy institutions imparting pharmacy courses for the ensuing academic year of 2022-2023 on the basis of inspection conducted by the PCI in February 2020 and to not insist on fresh applications from the institutions pursuant to the PCI's circular of 3rd July 2022, which was issued in compliance of the interim order of this Court dated 31st May 2022 passed in Special Leave Petition (Civil) No.4862 of 2022.

5. We have heard Shri Maninder Singh, learned Senior Counsel appearing on behalf of the appellant-PCI and Shri Rakesh Dwivedi and Shri Vinay Navare, learned Senior Counsel, Shri Amit Pai, Shri Sanjay Sharawat, Shri Siddharth

R. Gupta, and Shri Shivam Singh, learned counsel appearing on behalf of their respective respondent(s).

6. Shri Maninder Singh, learned Senior Counsel would submit that the High Courts have totally erred in interfering with the Resolution dated 17th July 2019 passed by the appellant-PCI. He submits that the perusal of the preamble of the Pharmacy Act, 1948 (hereinafter referred to as "the said Act") read with Sections 3, 10 and 12 thereof would clearly reveal that the appellant-PCI has a power to regulate in the field of pharmacy education. He submits that the power to regulate would also include a power to put a moratorium for a certain period. The learned Senior Counsel submits that perusal of Section 3 of the said Act would reveal that the Central Council of the PCI consists of experts from various fields including teachers in the subject concerning pharmacy, elected by the University Grants Commission ("UGC" for short), persons possessing a degree or diploma in and practicing pharmacy or pharmaceutical chemistry, nominated by the

Central Government; a representative of the Medical Council of India; representatives of States elected from the members of the State Council, so also a member to represent each State nominated by the State Government, who shall be a registered pharmacist. He, therefore, submits that the Body, which consists of so many experts from various fields, is a Body which is competent to take decisions in the best interests of the pharmacy education.

7. Shri Maninder Singh, learned Senior Counsel submits that the decision was taken by the appellant-PCI after a sub-committee of experts was appointed to study the issue. It is submitted that after the sub-committee recommended moratorium in view of mushrooming growth of pharmacy colleges, the Central Council of the appellant-PCI, after taking into consideration all these aspects, recommended a moratorium. He submits that this was done in order to prevent a situation which would lead to uncontrolled growth of pharmacy colleges, resultantly producing many pharmacists,

who will be without any employment. It is submitted that these factors have not been taken into consideration by the High Courts in the impugned judgments.

8. Shri Maninder Singh further submitted that the perusal of the Communication of the Government of India, Ministry of Health & Family Welfare dated 22nd April 2022 would reveal that the Central Government was consulted as required under Section 10 of the said Act.

9. Shri Maninder Singh further submitted that the power to regulate would also include a power to prohibit. He relies on the judgments of this Court in the case of ***Madhya Bharat Cotton Association Ltd. vs. Union of India and another***[1] and in the case of ***Star India Private Limited vs. Department of Industrial Policy and Promotion and others***[2] in this regard.

1 AIR 1954 SC 634
2 (2019) 2 SCC 104

10. Shri Maninder Singh would further submit that a Division Bench of the Bombay High Court, Aurangabad Bench, in a batch of writ petitions being Writ Petition No. 4919 of 2020 (***Sayali Charitable Trust's College of Pharmacy vs. The Pharmacy Council of India, decided on 6th November 2020***) along with connected matters has upheld the moratorium. He submits that, however, the said judgment of the Bombay High Court has not been considered by all the three High Courts of Karnataka, Delhi and Chhattisgarh.

11. Shri Maninder Singh submits that, having regard to the scheme of the said Act and the purpose sought to be achieved therein, it will have to be held that it is not only the jurisdiction of the PCI, but its duty and responsibility to impose a moratorium so as to prevent mushrooming growth of pharmacy colleges in the country. Learned Senior Counsel further submits that the power to impose such regulations has been upheld by this Court in the case of ***Jawaharlal Nehru Technological University Registrar vs. Sangam Laxmi Bai***

Vidyapeet and others[3]. He submits that the facts in the present case and the facts in the case of ***Jawaharlal Nehru Technological University Registrar (supra)*** are totally identical. It is, therefore, submitted that the view taken by all the three High Courts is liable to be set aside and it is required to be held that the moratorium imposed, being in the larger public interest, is legal and valid.

12. Shri Maninder Singh relies on the judgment of this Court in the case of ***Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) vs. Central Board of Secondary Education and others[4]*** in support of his submission that the moratorium could also be imposed by a resolution of the appellant-PCI and it would be a law as per Article 13 of the Constitution of India.

13. Per contra, Shri Rakesh Dwivedi, learned Senior Counsel, submitted that it is the fundamental right of the respondent –

3 (2019) 17 SCC 729
4 (2021) 7 SCC 535

Institutions to establish educational institutions under Article 19(1)(g) of the Constitution of India. He relies on the judgments of this Court in the cases of ***T.M.A. Pai Foundation and others vs. State of Karnataka and others***[5], ***Islamic Academy of Education and another vs. State of Karnataka and others***[6], **and** ***P.A. Inamdar and others vs. State of Maharashtra and others***[7] in that regard.

14. Shri Rakesh Dwivedi submits that there is no doubt that reasonable restrictions could be imposed on the fundamental rights. However, the burden lies on the State to establish that the restrictions so imposed are reasonable and have a nexus with the object to be achieved. He submits that the appellant-PCI has totally failed to discharge the said burden. It is submitted that the restriction, which is in the nature of absolute prohibition, is totally unreasonable, arbitrary and

5 (2002) 8 SCC 481 [Para 18 to 25]
6 (2003) 6 SCC 697 [Para 120]
7 (2005) 6 SCC 537 [Para 92]

discriminatory. It is submitted that it has no nexus with the object to be achieved.

15. Shri Rakesh Dwivedi further submits that the impugned communications of the appellant-PCI are arbitrary. To buttress his submission that the impugned communications of the appellant-PCI are arbitrary, Shri Rakesh Dwivedi submitted that the appellant-PCI itself has exempted Government Colleges from the moratorium imposed, which has in effect added about 34000 seats in the field of pharmacy. He further submits that the impugned communication exempts the North Eastern region from its operation. As such, the power has been exercised in a manifestly arbitrary manner. It is submitted that the only justification given is that if there is no moratorium, it will lead to unemployment. He submits that if such a ground is to be accepted, then all the colleges imparting education in different areas like Medicine, Law, Engineering, Technology, etc. will have to be banned.

16. Shri Rakesh Dwivedi further submitted that, unless the power to ban is specifically provided in the statute, such a power cannot be exercised. In any case, he submitted that if such a power was to be exercised, the same could have been exercised only by framing a Regulation in accordance with Section 10 of the said Act. He further submitted that for such a Regulation to be valid, the following four factors are required to be complied with:

(i) The copies of the draft Regulations should be furnished by the Central Council to all the State Governments and before the Central Council submits the Education Regulations to the Central Government for approval, the comments of the State Governments are to be invited and considered;

(ii) That such Regulations must have approval of the Central Government;

(iii) In view of Section 10(4), such Regulations will have to be published in the Official Gazette;

(iv) In view of sub-section (4) of Section 18 of the said Act, such Regulations have to be laid before each House of Parliament.

17. Shri Vinay Navare, learned Senior Counsel submitted that the perusal of Section 3 of the said Act would reveal that the Central Council of the appellant-PCI consists essentially of persons who are connected with the practice of Pharmacy. He submits that the moratorium is imposed with a mala fide intention by those persons who are already connected with the profession of Pharmacy so as to create a monopoly in the field. He submits that if the composition of the Central Council of the appellant-PCI under the said Act is compared with the composition of the Council under the All India Council for Technical Education Act, 1987 (hereinafter referred to as "AICTE Act"), it would reveal that the Council under the AICTE

Act has a wider spectrum. It also consists of the persons not connected with Technical Education.

18. Shri Navare further submitted that the powers under Section 10 of the AICTE Act are much wider than the powers of the Central Council under Section 10 of the said Act.

19. Shri Navare further submitted that the Resolution which is sent to the State Government is only for the purpose of intimation and, therefore, there is no sufficient compliance of requirement under Section 10(3) of the said Act.

20. Relying on the judgment of this Court in the case of ***V.T. Khanzode and others vs. Reserve Bank of India and another***[8], Shri Navare submits that since the appellant-PCI is a statutory body, its powers would be circumscribed by the statutory provisions. He submitted that since the power to impose prohibition is not provided under the said Act, such an exercise is wholly impermissible in law.

8 (1982) 2 SCC 7

21. He further submits that there can be no restrictions on fundamental rights except by a valid law enacted by the legislature. In this respect, he relies on the judgment of this Court in the case of ***Modern School vs. Union of India and others***[9].

22. Shri Navare further submits that the words used in sub-section (1) of Section 10 of the said Act are "subject to the approval of the Central Government". He, therefore, submits that unless there is an approval of the Central Government with regard to the moratorium, the same would not be valid in law. He relies on the judgments of this Court in the cases of ***Padubidri Damodar Shenoy vs. Indian Airlines Limited and another***[10], and ***Vijay S. Sathaye vs. Indian Airlines Limited and others***[11] in support of this proposition.

23. Shri Amit Pai, learned counsel also submitted that the impugned communications are totally beyond the powers of the

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9 (2004) 5 SCC 583
10 (2009) 10 SCC 514
11 (2013) 10 SCC 253

appellant-PCI and, as such, no interference is warranted with the impugned judgments and orders of the High Courts.

24. Shri Sanjay Sharawat, learned counsel submitted that the decision to impose moratorium has been taken by the appellant-PCI without conducting any survey. No material is placed on record in support of its decision. He submits that the decision to impose moratorium is wholly arbitrary. He further submits that the appellant-PCI has acted in an arbitrary manner. On one hand, it has imposed ban and on the other hand it has granted permission to about 2500 institutions to start pharmacy courses. As such, it has acted in a totally arbitrary and discriminatory manner.

25. Shri Siddharth Gupta, learned counsel, submitted that the impugned communications are totally discriminatory in nature and tend to create a monopoly in respect of the existing colleges inasmuch as they have been permitted to expand the number of existing seats. He further submits that the cap of 50 colleges imposed for all the States is totally arbitrary. He

submits that the cap for a highly populated State like Uttar Pradesh and for a small State like Goa is the same. He submits that in the State of Chhattisgarh, 7 colleges have been granted permission on the ground that they were in the pipeline. As such, there is no consistency in the policy of the appellant-PCI. He relies on the judgments of this Court in the case of ***Index Medical College, Hospital and Research Centre vs. State of Madhya Pradesh and others***[12] in support of his submission.

26. Relying on the judgment of this Court in the case of ***Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others***[13], he submits that unless the impugned restriction satisfies the test of proportionality of restrictions, the same would not be tenable in law. He submits that it will be necessary to find out as to whether the limitation on constitutional rights is for a purpose which is reasonable and necessary in a democratic society. He submits that applying the said test, the impugned

12 2021 SCC OnLine SC 318
13 (2016) 7 SCC 353

communication which imposed a total ban for a period of five years does not stand the proportionality test.

27. Shri Shivam Singh, learned counsel submitted that the decision-making process is totally vitiated. He submits that taking into consideration the pandemic situation, the Authorities ought to have considered that there is a need to have a larger number of Pharmacy colleges. However, this aspect has been totally ignored by the appellant-PCI.

28. All the three High Courts, i.e., Karnataka, Delhi and Chhattisgarh, while allowing the writ petitions filed by the respondent-institutions and quashing and setting aside the Resolutions/communications of the Central Council of the appellant-PCI, have, in a nutshell, held thus:

(i) That the right to establish educational institutions is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India;

(ii) That there can be reasonable restrictions on such a right. However, such a restriction can be imposed only by law enacted by the competent legislature;

(iii) The Resolution/communication dated 17th July 2019, vide which the moratorium was imposed is an executive instruction and could not be construed as a law and, therefore, the moratorium imposed by an executive instruction is not sustainable in law.

29. Apart from that, the learned Single Judge of the Karnataka High Court has further found that the petitioners before the High Court were entitled to establish colleges on the principles of promissory estoppel and legitimate expectation. The learned Single Judge of the Karnataka High Court as well as the learned Single Judge of the Delhi High Court have also held that the Resolution of the appellant-PCI was violative of Article 14 of the Constitution of India inasmuch as the government institutions and the institutions in the North Eastern region were exempted from the applicability of the

moratorium. It was found that such an act was discriminatory. It was further found that the cap of 50 Pharma institutes per State was also arbitrary inasmuch as the appellant-PCI does not take into consideration the fact that the population of the States varies from State to State and, as such, there could not have been a uniform formula of capping 50 pharmacy institutes for every State.

30. Undisputedly, the Central Council of the appellant-PCI vide its Resolution/communication dated 17th July 2019 has resolved as under:

> "**RESOLUTION**
>
> Taking into consideration the availability of sufficient qualified pharmacist workforce, the House unanimously resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-2021. This moratorium shall not be applicable in the North Eastern region of the country where there is a shortage of pharmacy colleges."

31. It can thus be seen that vide the said Resolution, the Central Council resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-2021. The said Resolution dated 17th July 2019 was modified in the 107th meeting of the Central Council of the appellant-PCI held on 5th and 6th August 2019. The relevant part of the modified Resolution reads thus:

> "1252.4 In view of it, it was unanimously decided that moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-2021 will be subject to following conditions-
>
> a) The moratorium will not apply to the Government institutions.
>
> b) The moratorium will not apply to the institutions in North Eastern region.
>
> c) The moratorium will not apply to the States/Union

Territories where the number of D. Pharm and B. Pharm institutions (both combined) is less than 50.

d) The institutions which had applied for opening D. Pharm and/or B. Pharm colleges for 2019-20 academic session either to the PCI or to the AICTE and the proposal was rejected or not inspected due to some reason or the other will be allowed to apply for 2020-21 academic session and this relaxations is given only for one year i.e. for 2020-21 academic session only.

e) Existing approved pharmacy institutions will be allowed to apply for increase in intake capacity as per PCI norms and/or to start additional pharmacy course(s)."

32. It is thus clear, and in all fairness, not even disputed by the appellant-PCI, that the moratorium was issued by the Central Council of the appellant-PCI in its executive powers

and not by framing any regulation, as provided under Sections 10 and 18 of the said Act.

33. The moot question, therefore, that requires consideration, is as to whether the moratorium, as imposed by the Central Council of the appellant-PCI, could have been imposed by the said Resolution, which is in the nature of an executive instruction of the Central Council.

34. It will be relevant to refer to the following observations of the Constitution Bench, consisting of 11 Judges, of this Court in the case of ***T.M.A. Pai Foundation*** **(supra)**:

> "**18.** With regard to the establishment of educational institutions, three articles of the Constitution come into play. Article 19(1)(*g*) gives the right to all the citizens to practise any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(*g*) and Article 26, therefore, confer rights on all citizens and

> religious denominations to establish and maintain educational institutions….”

35. It could thus clearly be seen that the Constitution Bench of this Court in the aforesaid case, in unequivocal terms, holds that in view of Article 19(1)(g) and Article 26 of the Constitution of India, all citizens and religious denominations are conferred with a right to establish and maintain educational institutions.

36. Another Constitution Bench, consisting of five Judges, of this Court in the case of ***Islamic Academy of Education (supra)*** has held thus:

> “**120**. So far as institutions imparting professional education are concerned, having regard to the public interest, they are bound to maintain excellence in the standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(*g*) and Article 30 of the Constitution of India. The width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a

> view to achieve the said goal, indisputably, the regulations can be made by the State.
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> **121**. The right to administer does not amount to the right to maladminister and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions."

37. It could thus be seen that the Constitution Bench in ***Islamic Academy of Education (supra)*** holds that the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(*g*) and Article 30 of the Constitution of India for maintaining excellence in the standard of education. It has been held that regulatory measures are necessary for ensuring orderly, efficient and sound administration.

38. Thereafter the Constitution Bench, consisting of Seven Judges, of this Court in the case of ***P.A. Inamdar (supra)***, observed thus:

> "**92.** As an occupation, right to impart education is a fundamental right under Article 19(1)(*g*) and, therefore, subject to control by clause (6) of Article 19. This right is available to all citizens without drawing a distinction between minority and non-minority. Such a right is, generally speaking, subject to the laws imposing reasonable restrictions in the interest of the general public. In particular, laws may be enacted on the following subjects: (*i*) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; (*ii*) the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise. Care is taken of minorities, religious or linguistic, by protecting their right to establish and administer educational institutions of their choice under Article 30. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities."

39. It could thus be seen that the Constitution Bench of this Court in ***P.A. Inamdar (supra)*** has again reiterated that the

right to impart education is a fundamental right under Article 19(1)(*g*) and, therefore, subject to control by clause (6) of Article 19. It has been held that such a right is subject to the laws imposing reasonable restrictions in the interest of the general public. It has further been held that the laws may be enacted for prescribing the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. The laws could also be enacted for the purposes of the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise.

40. In the case of ***Modern Dental College and Research Centre (supra)***, the Constitution Bench, consisting of Five Judges, of this Court held that though private unaided minority and non-minority institutions have a right to establish educational institutions, in order to balance the public interest, the State is also empowered to frame Regulations in the interest

of general public. This Court held that, while considering the scope of reasonable restrictions which are sought to be brought in, in the interest of the general public, the exercise that is required to be undertaken is the balancing of the fundamental rights to carry on a trade or occupation on one hand and the restrictions so imposed on the other hand. This Court held that it was necessary to find out as to whether the restrictions so imposed were proportional or not.

41. It is thus clear that though there is a fundamental right to establish educational institutions, the same can be subject to reasonable restrictions, which are found necessary in the general public interest. However, the question that requires to be answered is as to whether the same can be done by executive instructions or not.

42. The question is directly answered by this Court in the case of ***State of Bihar and others vs. Project Uchcha Vidya,***

Sikshak Sangh and others[14] in paragraph 69, which reads thus:

> "**69.** The right to manage an institution is also a right to property. In view of a decision of an eleven-Judge Bench of this Court in *T.M.A. Pai Foundation* v. *State of Karnataka* [(2002) 8 SCC 481] establishment and management of an educational institution has been held to be a part of fundamental right being a right of occupation as envisaged under Article 19(1)(*g*) of the Constitution. ***A citizen cannot be deprived of the said right except in accordance with law. The requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. Such a law, it is trite, must be one enacted by the legislature***."
>
> [emphasis supplied]

43. It could thus be seen that this Court has categorically held that a citizen cannot be deprived of the said right except in accordance with law. It has further been held that the requirement of law for the purpose of clause (6) of Article 19 of

14 (2006) 2 SCC 545

the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. It has been held that such a law must be one enacted by the legislature.

44. Shri Maninder Singh, learned Senior Counsel, relied on the judgment of this Court in the case of ***Jawaharlal Nehru Technological University Registrar (supra)*** to submit that in the said case also, a moratorium which was imposed by the State of Telangana was found to be valid since it was done to control mushrooming growth of educational institutions.

45. A perusal of the judgment of this Court in the case of ***Jawaharlal Nehru Technological University Registrar (supra)*** would reveal that this Court found that Section 20 of the Telangana Education Act, 1982 specifically empowered the State to issue such a direction imposing a moratorium. No such provision can be found in the said Act, which would empower

such a restriction to be imposed by the Resolution of the Central Council.

46. It will also be relevant to refer to the following observation of the Constitution Bench, consisting of five Judges, of this Court in the case of ***State of M.P. vs. Thakur Bharat Singh***[15]:

> "Viewed in the light of these facts the observations relied upon do not support the contention that the State or its officers may in exercise of executive authority infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued."

47. It is thus clear that the Constitution Bench of this Court holds that the State or its officers cannot exercise its executive authority to infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued.

48. It could thus be seen that the Constitution Bench holds that even an Executive cannot do something to infringe the

15 (1967) 2 SCR 454

rights of the citizens by an executive action, though the State Legislature has legislative competence to legislate on the subject.

49. Shri Maninder Singh, learned Senior Counsel appearing on behalf of the appellant-PCI, relies on the judgment of this Court in the case of ***Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) vs. Central Board of Secondary Education and others (supra)*** in support of his contention that since the Central Council of the appellant-PCI is a public authority and discharges public functions, the Resolution resolved by it would partake the character of a law within the meaning of Article 13 of the Constitution of India. It may be noted that in the case of ***Jigya Yadav (Minor) (Through Guardian/Father Hari Singh) vs. Central Board of Secondary Education and others (supra)***, this Court was considering the powers of the Central Board of Secondary Education ("CBSE" for short), which is a society registered

under the Societies Registration Act, 1860. CBSE is not a body incorporated under any statutory provisions. However, the Central Council of the appellant-PCI is a statutory body constituted under the said Act.

50. It will be relevant to refer to the observations of this Court in the case of ***Shrimati Hira Devi and others vs. District Board, Shahjahanpur***[16], which reads thus:

> "The defendants were a Board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself.

51. It will also be relevant to refer to paragraph 18 of the judgment of this Court in the case of ***V.T. Khanzode (supra)***, which is as follows:

> "**18.** In support of this submission, reliance is placed by the learned counsel on the statement of law contained in para 1326 and 1333 (pp. 775 and 779)

16 (1952) SCR 1122

of *Halsbury's Laws of England*, 4th Edn. In para 1326 it is stated that:

> "Corporations may be either statutory or non-statutory, and a fundamental distinction exists between the powers and liabilities of the two classes. Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them; non-statutory corporations, speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute."

Para 1333 says that:

> "The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited."

There is no doubt that a statutory corporation can do only such acts as are authorised by the statute creating it and that, the powers of such a corporation cannot extend beyond

what the statute provides expressly or by necessary implication. If an act is neither expressly nor impliedly authorised by the statute which creates the corporation, it must be taken to be prohibited. This cannot, however, produce the result for which Shri Nariman contends. His contention is not that the Central Board has no power to frame staff regulations but that it must do so under Section 58(1) only. On that argument, it is material to note that Section 58(1) is in the nature of an enabling provision under which the Central Board "may" make regulations in order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the Act. This provision does not justify the argument that staff regulations must be framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff. If it has that power, it may exercise it either in accordance with Section 58(1) or by acting appropriately in the exercise of its general power of administration and superintendence."

[emphasis supplied]

52. It could thus be seen that this Court has approved paragraph 1326 and 1333 (pp. 775 and 779) of *Halsbury's Laws of England*, 4th Edition, to the effect that a statutory corporation can do only such acts as are authorised by the statute creating it and that the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication. Though in the said case, this Court held that the said principle is not applicable inasmuch as the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff, the said principle will indeed be applicable to the case at hand.

53. Shri Maninder Singh, learned Senior Counsel, further submitted that the preamble of the said Act itself used the word "regulate" and the word "regulate" would include within its ambit the power to "prohibit". Strong reliance is placed on the judgment of this Court in the case of ***Star India Private Limited (supra)***. However, it is to be noted that in the said case, certain clauses of the Telecommunication (Broadcasting

and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 notified on 3-3-2017, made under Section 36 of the Telecom Regulatory Authority of India Act, 1997, together with the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 notified on the same date were under challenge. In the present case, what is being sought to be done was done by a Resolution of the Central Council of the appellant-PCI and not by any Regulation framed under the provisions of the said Act. As such, the judgment of this Court in the case of ***Star India Private Limited (supra)*** is not applicable to the facts of the present case.

54. Shri Maninder Singh further relied on the judgment of the Division Bench of the Bombay High Court, Aurangabad Bench, in ***Sayali Charitable Trust's College of Pharmacy (supra)***. However, since we have held that the right to establish an educational institution is a fundamental right under Article 19(1)(g) of the Constitution of India and reasonable restrictions

on such a right can be imposed only by a law and not by an execution instruction, we are of the view that the Division Bench of the Bombay High Court, Aurangabad Bench, in the said case does not lay down the correct position of law. In our view, the view taken by the High Courts of Karnataka, Delhi and Chhattisgarh lays down the correct position of law.

55. Since we have held that the Resolutions/communications dated 17th July 2019 and 9th September 2019 of the Central Council of the appellant-PCI, which are in the nature of executive instructions, could not impose restrictions on the fundamental right to establish educational institutions under Article 19(1)(g) of the Constitution of India, we do not find it necessary to consider the submissions advanced on other issues. We find that the Resolutions/communications dated 17th July 2019 and 9th September 2019 of the Central Council of the appellant-PCI are liable to be struck down on this short ground.

56. Before parting, we may observe that there could indeed be a necessity to impose certain restrictions so as to prevent mushrooming growth of pharmacy colleges. Such restrictions may be in the larger general public interest. However, if that has to be done, it has to be done strictly in accordance with law. If and when such restrictions are imposed by an Authority competent to do so, the validity of the same can always be scrutinized on the touchstone of law. We, therefore, refrain from considering the rival submissions made on that behalf.

57. It is further to be noted that the applications seeking approval for D. Pharm and B. Pharm courses are required to be accompanied by a "No Objection Certificate" ("NOC") from the State Government and consent of affiliation from the affiliating bodies. While scrutinizing such applications, the Council can always take into consideration various factors before deciding to allow or reject such applications. Merely because an institution has a right to establish an educational institution does not mean that such an application has to be allowed. In a

particular area, if there are more than sufficient number of institutions already existing, the Central Council can always take into consideration as to whether it is necessary or not to increase the number of institutions in such an area. However, a blanket prohibition on the establishment of pharmacy colleges cannot be imposed by an executive resolution.

58. In the result, the appeals filed by the Pharmacy Council of India are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

59. The writ petitions filed by the institutions shall stand disposed of in terms of the above.

60. Pending application(s), if any, shall also stand disposed of.

CIVIL APPEAL ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.1887 OF 2022 [SHAHEED TEG BAHADUR COLLEGE OF PHARMACY VS. PHARMACY COUNCIL OF INDIA]

61. The appeal filed by Shaheed Teg Bahadur College of Pharmacy challenges the order dated 23rd December 2021

passed by the learned Single Judge of the High Court of Delhi at New Delhi in CM Application No. 41337 of 2021 in Writ Petition (Civil) No.175 of 2021.

62. In view of the judgment passed by this Court today in Civil Appeal arising out of Special Leave Petition (Civil) No.19671 of 2021 and connected matters, this appeal has been rendered infructuous and is disposed of as such. However, there shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

..............................J.
[B.R. GAVAI]

..J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
SEPTEMBER 15, 2022.