HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 10763/2025

Global Pharmacy College, Kuchaman City, District Nagaur Under Management Of The Global Management And Technology Sansthan, Station Road, Kuchaman City, Nagaur, Through Its Secretary Sultan Singh Thalor S/o Rameshwar Lal, Aged About 42 Years, R/o Raghunath Pura, Khood, Khoor, Sikar, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Through State Additional Chief Secretary, Department Of Medical Health And Family Welfare, Government Of Rajasthan, Secretariat, Jaipur.
2. Secretary, Medical Education Department, Govt. Of Rajasthan, Saket Colony, Adarsh Nagar, Jaipur, Rajasthan.
3. Additional Director, Directorate Of Medical Education, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur Rajasthan.
4. Pharmacy Council Of India, Nbcc Centre, 3Rd Floor, Plot No. 07, Community Centre, Maa Anandamai Marg, Okhla Phase-I, New Delhi Through Its Registrar Cum Secretary.
5. Rajasthan Pharmacy Council, Through Its President, Govt. Dispensary Campus, Near Sahkar Bhawan, Sardar Pate Marg, Jaipur.
6. Rajasthan University Of Health Sciences, Kumbha Marg, Tonk Road, Jaipur Through Its Registrar.

----Respondents

For Petitioner(s)	:	Mr. Shreyansh Mardia. Mr. Mayank Rajpurohit.
For Respondent(s)	:	Mr. N.S. Rajpurohit, AAG with Ms. Kanchan Jodha. Mr. Nishant Gaur. Mr. Sajjan Singh Rathore, AAG with Mr. Pravin Kumar Choudhary Ms. Akshiti Singhvi Mr. Mahendra Vishnoi Mr. Shagun Mathur Mr. Tanishq Bafila

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HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

Reportable

Reserved on : 07/10/2025

Pronounced on : 14/10/2025

1. This writ petition has been filed by the petitioner - Institution with the following prayer :-

> *A. By appropriate writ, order or direction the order dated 26.04.2025 (Annex.12) issued by Government of Rajasthan Medical education "Group-I" department deserves to be declared illegal and be quashed and set aside.*
> *B. That the respondent State may kindly be directed to grant NOC to the Petitioner institution for academic year 2025-26 and subsequent year;*
> *C. By appropriate writ, order or direction the decision taken by Pharmacy Council of India in its 423th Execution Committee held on 12.02.2025 may kindly be declared illegal and be quashed and set aside.*
> *D. By appropriate writ, order or direction the respondent State Government may kindly be directed to grant NOC in favour of the Petitioner institution to undertake the B.Pharmacy course for academic year 2025-26 and for subsequent academic years.*
> *E. That the Rajasthan University of Health Sciences be directed to grant and continue affiliation for the academic year 2025-26 and for subsequent academic years.*
> *F. Any other order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the humble petitioner;*
> *G. The costs of the writ petition may kindly be awarded in favour of the petitioner.*

2. Brief Facts :

2.1 The petitioner - Institution applied for starting degree course of B-Pharmacy and sought grant of affiliation so also NOC from the State Government. The inspection of the college premises was not conducted and in these circumstances a writ petition being SBCWP No.9008/2024 was filed and the same came to be disposed of vide order dated 23.05.2024 while granting liberty to the petitioner to

approach the respondent authorities. In compliance of the said order, the inspection was conducted and report was submitted on 28.08.2024 (Annexure-3). The said report was in favour of the petitioner – Institution. Despite the said report, no action was taken, then the petitioner-Institution filed another writ petition being SBCWP No.3340/2025, wherein interim order dated 06.02.2025 came to be passed and directions were issued to grant consent of affiliation of the petitioner – Institution on provisional basis.

2.2 The petitioner – Institution was granted provisional consent of affiliation on 25.02.2025 (Annexure-10) by the respondent – RUHS. However, on account of non-submission of NOC and consent of affiliation before the Pharmacy Council of India ('PCI'), the application filed by the petitioner for starting degree course of B-Pharmacy was rejected on 12.02.2025 (Annexure-11).

2.3 The State Government thereafter passed an order dated 26.04.2025 (Annexure-12) imposing ban on grant of NOC to the colleges intending to start B.Pharmacy Course operating in the State of Rajasthan so also for establishment of new colleges seeking to impart B-Pharmacy course. In these circumstances, the earlier writ petition being SBCWP No.3340/2025 was withdrawn by the petitioner on 14.05.2025 with liberty to file afresh. Hence, the present writ petition has been filed challenging the impugned order dated 26.04.2025 (Annexure-12).

3. Learned counsel for the petitioner while arguing the writ petition made the following submissions :-

(i)- The impugned order dated 26.04.2025, whereby the State Government has imposed ban, has been made applicable only on

private colleges. Such action is not only arbitrary but also discretionary as well. The ban has been imposed for starting new pharmacy course by private colleges, however, at the same time, Government colleges / universities are allowed to admit students for B-Pharma course. That being so, the impugned order is required to be quashed and set-aside being arbitrary and discriminatory and such action is nothing but a colourable exercise of power.

(ii)- The reason for passing the impugned order dated 26.04.2025 is that there is mushroom growth of unemployed B-Pharma degree-holders and therefore, such ban was required. The respondents on one hand have imposed such ban and parallelly, new advertisements are being issued in frequent interval which rather indicate that there is requirement of B-Pharma degree-holders in different departments, at different places and at different positions.

(iii)- The ban would remain applicable on private institutes for starting new Pharmacy course, however, the Government / private universities would continue to admit students as there is no requirement of NOC. Based on such facts, the State Government has adopted a discriminatory approach which is bad in eyes of law.

(iv)- The impugned order has been made applicable only on those private colleges, which are affiliated to RUHS and that too, the institutes which are proposing to start new pharmacy course. The said action is in complete violation of Article 14 of the Constitution of India as the existing colleges would be allowed to continue and petitioner – Institution would be deprived of running such course.

(v)- Decision has been taken without collecting any empirical data on the requirement of B-Pharma degree holders in the working field.

(vi)- As per the note-sheet annexed with the additional affidavit, the respondent has given combined figure of 19000 students for being awarded degree / diploma-holder. As a matter of fact, in the present case the issue pertains to grant of NOC for B. Pharma courses and therefore, the combined figure as highlighted shows that the authority has not taken the decision while actually considering the figures of the candidates obtaining degree courses. As a matter of fact, this further reflects that decision has been taken without due application of mind.

(vii)- Another reason for imposing ban on starting new pharmacy course is that there were shortage of admissions in the existing institutes, which varies from 10% to 25%. This reason cannot be a ground to impose such ban, more particularly in the case of the petitioner. The petitioner is proposing to start B-Pharma course in District Nagaur and to the best of petitioner’s knowledge, there is no other Institute in Nagaur District which imparts B-Pharma degree and that being so, the reason assigned by the respondent in imposing ban is totally contrary to the record. No demographic study has been done and such ban has been imposed without considering the fact that a person who obtains B-Pharma degree is not only eligible to seek employment under the Government sector but have ample opportunities in private sector such as Pharmacist in Hospital, Drug Inspector, Research Institutes, Quality Control / Assurance Officer, Teaching positions, Medical Representatives,

Retail Pharmacist, Clinical Research Associate, Vigilance Officer etc.

In view of the requirement in various positions in private sector, the decision to impose ban cannot be said to be justified in any manner.

(viii)- The controversy with regard to imposition of moratorium in starting fresh pharmacy course came up for consideration before the Hon'ble Apex Court in the case of **Pharmacy Council of India vs. Rajeev College of Pharmacy & Ors.**, reported in AIR 2022 SC 4321 wherein it has been observed that imposing such restriction amounts to violation of Article 19(1)(g) of the Constitution of India. Further such ban / imposition of moratorium amounts to violation of fundamental right to establish educational institutions. The establishment of educational institutions can always be subject to reasonable restrictions, which are found to be necessary in the public interest. However, even in those cases it is to be seen whether the authority imposing such restriction is competent to do so in accordance with law or not.

In view of the aforesaid judgment passed by the Hon'ble Apex Court, the impugned order deserves to be quashed and set-aside on this ground alone.

(ix)- Such ban cannot be imposed by an executive order as the Pharmacy Act, 1948 does not provide for any provision conferring power to impose such ban in issuing NOCs and therefore, without any legislative backing, the impugned order could not have been passed.

(x)- The impugned order has been passed by the Medical Education Department in furtherance of decision taken in the

meeting conducted on 24.03.2025 in the presence of Health Minister, however, by an executive order, such ban cannot be imposed.

4. Per contra, learned Additional Advocate General Mr. N.S. Rajpurohit appearing for the respondent-State and Mr. Mahendra Bishnoi appearing for the respondent – RUHS made following submissions:-

(i)- The impugned order is perfectly justified and has been passed in accordance with law. This decision is a conscious policy decision and not merely an executive instruction. The decision cannot be said to be arbitrary or discriminatory in any manner, more particularly when such decision has been taken in a meeting presided by the Health Minister and has been applied uniformly on all private colleges.

(ii)- As mentioned in the Minutes of Meeting, data was collected by the Rajasthan Pharmacy Council and based on said data, the decision was taken. The Rajasthan Pharmacy Council is the governing body, which is a regulatory authority on the State level and has all the data. Based on the data obtained from Rajasthan Pharmacy Council, the State Government took a conscious decision and the impugned order was passed. Further, the order has been passed in the larger public interest and therefore, no interference is required and the writ petition is required to be dismissed at the threshold.

(iii)- So far as judgment cited by the learned counsel for the petitioner is concerned, the Hon’ble Apex Court in paras 56 & 57 therein has observed that in case it is needed to impose such restrictions so as to prevent mushroom growth of pharmacy

colleges, such restrictions can be imposed in the larger public interest. Granting of NOC is not a mere formality and the State authorities/Council can always examine the case and may allow or reject application seeking grant of NOC. It is further stated that merely because an institution has a right to establish an educational institution does not mean that such an application has to be allowed. If in a particular area 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 area.

Based on above submissions, it was prayed that writ petition be dismissed.

5. Heard learned counsel for the parties and perused the material available on record.

6. There are three questions which primarily require consideration in the present writ petition, *firstly,* whether the State Government is competent to impose ban on grant of NOC for degree course of B-Pharmacy by passing an executive order in absence of legislative competence to do so; *secondly*, whether the action of the State Government in confining the ban on private colleges alone amounts to arbitrary and discriminatory exercise of power; and *thirdly,* whether the State Government can impose ban in entire State on grant of NOC considering mushrooming of B.Pharma degree-holders and limited scope of employment ?

7. It would be appropriate to first examine the judgment cited by learned counsel for the petitioner as passed by the Hon'ble Apex Court in the case of **Pharmacy Council of India** (supra).

For ready reference paras 7, 9, 34, 37, 41, 42, 43, 48, 55, 56 & 57 are reproduced as under :-

"7. Shri Maninder Singh, learned Senior Counsel submits that the decision was taken by the Appellant-PCI after a subcommittee 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.

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. v. Union of India and Anr. : AIR 1954 SC 634 and in the case of Star India Private Limited v. Department of Industrial Policy and Promotion and Ors. : (2019) 2 SCC 104 in this regard.

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...."*

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.

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 Ors. v. Project Uchcha Vidya, Sikshak Sangh and Ors. : (2006) 2 SCC 545 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 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.

48. It could thus be seen that the Constitution Bench holds that even an Executive cannot do something to infringe the rights of the citizens by an executive action, though the State Legislature has legislative competence to legislate on the subject.

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."

7.1. A perusal of the above judgment, more particularly paras as referred above, clearly indicate that the Hon'ble Apex Court had an occasion to examine similar issue as raised in the present writ petition. The moot question as framed in para 33 was *"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."*

7.2. While noting the elaborate submissions made by the respective parties, the Hon'ble Apex Court went on to consider the earlier judgment passed by the Hon'ble Apex Court in **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors**, reported in (2002) 8 SCC 481 so also the Constitution Bench judgment in the

case of **Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors.**, reported in (2003) 6 SCC 697 and came to the conclusion that right to establish educational institutions is a fundamental right, however, the same is subject to reasonable restrictions, which are found to be necessary in the larger public interest.

7.3. While stating it to be a fundamental right, the Hon'ble Apex Court went on to examine the competence of the authority in imposing such ban by executive instructions and concluded that such executive ban can be imposed only if it has legislative competence.

8. As argued by learned counsel for the petitioner, under the Pharmacy Act, 1948 there is no power either with the Pharmacy Council of India or with the State Government to impose such ban and that being so, the State Government was not competent to pass the impugned order.

8.1. It is noted that learned counsel for the respondents have relied on paras 56 & 57 of the above cited judgment. A perusal of the said paras clearly indicates that the decision as to impose ban in order to prevent mushrooming growth of pharmacy colleges can be taken in the larger public interest. However, the same is to be done strictly in accordance with law.

8.2. It is further observed in para 57 of the said judgment that Council can always take into consideration various factors before deciding to allow or reject applications seeking grant of NOC. However, the decision as to whether it is necessary or not to increase the number of institutions in a given area can be taken by

the Council, however, a blanket prohibition on the establishment of pharmacy colleges cannot be imposed by an executive resolution.

8.3. The Allahabad High Court also had an occasion to deal with similar issue in the case of **Karmyog Sewa Samiti Vs. State of U.P. and Ors. (WRIT C No. 7273/2025)**, which has been decided on 19.08.2025. The Allahabad High Court while following the aforementioned judgment passed by the Hon'ble Apex Court, held as under:

> *"11. Considering the law, it is fairly well settled that the right to establish institution is a part of Article 19(1)(g) of the Constitution and that the technical institutes including the Pharmacy Council established under the Pharmacy Council of India Act have supremacy.*
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> *...*
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> *15. With regard to the moratorium imposed by the State Government through a policy decision till the Deloitte India Consultant gives a report, the same is also violative of the judgment of the Supreme Court in the case of Rajeev College of Pharmacy (supra) wherein a moratorium was enforced by PCI and was repelled by the Supreme Court in the light of rights enshrined under Art. 19(1)(g) of the Constitution. Once the right of placing the pharmacy education under moratorium by the authority which is empowered has been repelled, a similar stand taken by the State Government which does not have any supremacy with regard to pharmacy courses cannot be held to be justified.*
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> *16. In view of the settled position, the position of the State Government declaring the academic session 2025 - 26 as zero period is clearly without jurisdiction and also violative of the rights enshrined under Article 19(1)(g) of the Constitution. Besides the same, the said decision with regard to establishing the course or declaring the zero period is also vested in the PCI by virtue of Section 11.*
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> *17. Thus, for all the reasons recorded above, the action of the State Government for declaring the academic session 2025 - 26 for the B.Pharma and D.Pharma as zero period is clearly violative of Article 19(1)(g) of the Constitution and is accordingly set aside."*

8.4. Similarly, in another case wherein issue was raised qua imposition of moratorium by the State Government on grant of NOC for nursing courses, the Allahabad High Court in the case of

Babban Singh Memorial Education Sewa Trust Vs. State of U.P.; Writ – C No.9010/2024 (decided on 26.09.2025) while deciding the matter relied on the judgment passed by the Hon'ble Apex Court in the case of **Pharmacy Council of India** (supra). The Allahabad High Court after discussing the provisions of the Indian Nursing Council Act, 1947, held as under:

> *"36. On a plain reading of the provisions contained in the Sections referred to above, it is plainly clear that it is the Indian Nursing Council established at the Central and the State level which are empowered to regulate the study of the nursing courses for midwives, nurses and health visitors. In the 1947 Act, no power has been conferred upon the State except on the State Council established under law by the State to regulate the registration of nurses, midwives and health visitors.*
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> *37. It is essential to notice that on the lines of the Council established under the 1947 Act, Pharmacy Council has been established under the Pharmacy Act with powers which are similar to the Council granted under the 1947 Act as well as the Council established under the NCTE. The Councils established under the Act came up for consideration before the Supreme Court in the case of Pharmacy Council of India v. Dr. S.K. Toshniwal Educational Trusts Vidharbha Institute of Pharmacy and Ors.[12] with regard to establishing an institution being guaranteed under Art.19(1)(g) of the Constitution of India and supremacy of the Councils established under the Pharmacy Act to the following effect:*
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> *...*
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> *40. In the light of the provisions which are similar, the issue as raised came up for consideration before the Supreme Court in the case of Rajeev College of Pharmacy and Ors. (supra), wherein the action of the PCI itself in imposing a moratorium in opening of pharmacy colleges through executive instructions was considered in the light of the rights flowing from Art. 19(1)(g) of the Constitution of India and the Supreme Court after considering the submissions including the submission that there was a mushrooming of the pharmacy colleges which required imposition of moratorium, as was argued before the Supreme Court, observed that the moratorium was imposed in exercise of executive powers and not by framing any regulation as are prescribed under the Act and the following was observed in Paras 33, 34, 35, 36, 38, 40, 41 & 42:*
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> *...*

41. In the present case, based upon the law as explained in the case of Rajeev College of Pharmacy (supra) which flows from the similar provisions contained in the Pharmacy Act, it is clear that right to establish educational institutions is guaranteed under Art. 19(1)(g) of the Constitution of India; the same can be restricted only by taking recourse to Art. 19(6) of the Constitution of India by framing regulations. In the present case, no regulations have been framed and the imposition of moratorium is based upon executive instructions which cannot substitute the requirement of Art. 19(6) of the Constitution of India.

42. On a plain reading of the provisions of the Act, it is clear that it is only the Indian Nursing Council which is empowered to take decisions with regard to regulating and running of courses under the Act in question and the State Government has no authority to impose moratorium and certainly not indefinitely and certainly not through executive instructions.

43. It is also essential to notice the foundation based upon which the executive orders have been passed. The same also cannot be termed as reasonable inasmuch as no data appears to have been placed for taking a drastic decision of imposition indefinite moratorium. The only recommendation of the UPTSU without there being any data whatsoever either being considered or at least recorded in either two orders, cannot beheld to be justifiable exercise of powers. ....”

8.5. The Allahabad High Court in both the above-quoted judgments has categorically held the action of State Government imposing moratorium being without jurisdiction as the same had been taken through executive instruction.

8.6. Further, in a similar controversy wherein moratorium was imposed vide a resolution on grant of approval to new Law Institutes by the Bar Council of India was put to challenge before the Punjab and Haryana High Court on the ground that the same was done without any legislative backing. In the case of **Chandigarh Education Society Vs. Bar Council of India & Ors.; CWP No. 7441/2020** (decided on 04.12.2020) while observing that though the Bar Council of India has power under the Legal Education Rules, 2008 to issue guidelines however,

under the garb of said Rules, a complete ban on new law colleges could not be imposed. The Court in the said case, observed as under:

> *" Counsel for respondents No. 1 and 2 has failed to point out any provision in the Act that empowers the BCI to impose complete ban on setting up new institutes for imparting Legal Education under Section 7(1)(h) or any other provision in the Act in execution of its functions to promote legal education and lay down standards of such education.*
>
> *...*
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> *No doubt, the BCI can issue guidelines/circulars etc. and press for compliance thereof as well as 2008 Rules either at the grant of approval to a New College or adherence thereof by the Colleges/Institutes for Legal Education already existing throughout the country but under that pretext it can not impose a complete ban on opening of New Institutes for imparting Legal Education. It is pertinent to mention here that society has not approached this court to seek any relief against issuance of any circulars/guidelines or 2008 Rules. Even in the resolution (Annexure P-12), the BCI has noted that when the Bar Council of India has refused to grant approval to more than 300 institutions which had obtained NOC from the State Governments and affiliation by the university, the institutes approached some of the High Courts and adverse directions were issued to the BCI to consider the proposals of New Law Colleges. Counsel for respondents No.1 and 2 has failed to advance any arguments much less meaningful to give legal justification in regard to resolution/decision of the BCI to impose moratorium for a period of three years for grant of approval to New Law Colleges/Centers/Institutes."*

8.7. In the present case although the issue of grant of NOC is involved, however, this Court while dealing with the observations made by the Punjab and Haryana High Court, finds that the action of State Government imposing the ban is without any legislative backing therefore, the same cannot stand touchstone of law.

8.8. In view of the above discussion and decision rendered in the case of Pharmacy Council of India (supra), this Court has no hesitation in holding that the State Government is not competent

to impose such a ban, more particularly, when it does not has the legislative competence to do so.

9. The another issue, which has been raised by learned counsel for the petitioner is with regard to the arbitrary and discriminatory approach. It is to be noted that by the impugned order, the ban has been imposed on private colleges.

9.1. Learned counsel for the respondents have though relied on the note-sheet as placed on record along with the additional affidavit in order to justify the impugned decision, however, the respondent authorities have not been able to justify the decision with regard to ban being applied on private institutes alone. Although attention of this Court has been brought to the minutes of the meeting to show that the State Government is proposing to communicate with regard to non-requirement of NOC by the Universities, however, there is no positive direction to extend the imposition of ban on such universities. That being so, if the impugned order is allowed to exist, the order would be prohibiting the private colleges to start fresh B-Pharma course, however, at the same time the private universities or Government universities would be at liberty to establish new pharmacy course. That being the ultimate impact of the impugned order, would necessarily amount to arbitrary and discriminatory action on part of the State Government and that being so, there is no justification in imposing such ban on the private colleges.

10. The State Government has the authority to issue NOC which is only one of the steps before obtaining approval from the PCI. The rationale behind such requisite is to ensure that the institution has sufficient facilities and infrastructure to impart education. Such

authority of State Government cannot override the existence and power of the PCI which is the expert regulating authority incorporated through a special law. The apex governing body regulating the field of pharmacy is the PCI and the final decision to grant approval to colleges also rests with it. True it is that the State Government has authority to take policy decision, however, such decision has to be rational and cannot be taken without having jurisdiction to do so. The State Government can, in no manner, without deriving authority through proper legislation impose a blanket ban on grant of NOC, that too, taking only the private colleges under the umbrella of such ban.

11. In view of the discussion made above, the writ petition deserves acceptance and the same is allowed. The impugned order dated 26.04.2025 (Annexure-12) restricting the petitioner – Institution is held to be arbitrary and violative of Article 14 of the Constitution of India.

12. Needless to observe that as an outcome of the above, the necessary NOC is required to be issued to the petitioner-Institution if it otherwise fulfills the requisite criteria.

13. It is noted that a submission was made by learned counsel for the petitioner that the petitioner had already deposited the fee for the present academic year which has not been refunded. As the counseling for the present academic session is already over therefore, it is requested, at this stage, by the learned counsel for the petitioner-Institution that appropriate directions may be issued to the State Government to consider the petitioner’s case for the subsequent year and the fee deposited for the current year may be adjusted for the upcoming academic session.

14. The request made by learned counsel for the petitioner appears to be reasonable, more particularly, considering the fact that writ petition was filed on 22.05.2025 i.e. within one month from the date of passing of impugned order and therefore, if the petitioner fulfills all the requisite norms as required under the Pharmacy Act, 1948 and is entitled to establish pharmacy course, the fees deposited for the academic year 2025-26 for grant of NOC be adjusted for the subsequent year.

15. Pending application(s), if any, stand(s) disposed of.

(SUNIL BENIWAL),J

Rmathur/-