



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 8455 of 2022

Decided on: 10.03.2023

Batt Educational Society

...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner : Mr. Aman Parth Sharma, Advocate.

For the Respondents : Mr. Anup Rattan, A.G. with Mr. Y. W. Chauhan, Sr. Addl. A.G., Mr. J. S. Guleria, Dy. A.G. and Mr. Rajat Chauhan, Law Officer.

Tarlok Singh Chauhan, Judge (Oral)

The instant petition has been filed for the grant of following substantive reliefs:-

- i. That Clause 3 of the Rules of 2011 and any SoP thereto, may kindly declared as Ultra vires to the Parent Act, 2010 and further, direct respondent No. 3 to consider the case of the petitioner for opening of the Para Veterinary Institution, in accordance with provision of Section 19, without any requirement of essentiality certificate, within time bound manner and also office order dated 05.05.2022 and 18.10.2022 may kindly be quashed and set aside, in the interest of justice and fair play or in alternative
- ii. Office order/letter dated 05.05.2022 and 18.10.2022 may kindly be quashed and set-aside and respondent may

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

kindly be directed to consider the case of the petitioner as per the provision of Act, Rules and SoP governing the field in time bound manner, in the interest of justice and fair play.

2. The petitioner-Society applied for essentiality certificate for opening of Para Veterinary Institute with intake of 100 seats on 10.10.2022. However, the said application was rejected vide order dated 18.10.2022 on the basis of the instructions dated 05.05.2022.

3. According to the petitioner, the action of the respondents is highly arbitrary, illegal and unwarranted, as according to it, the so-called executive instructions dated 05.05.2022 cannot over-ride the provisions of the H.P. Para Veterinary Council Act, 2010 and the Rules framed thereunder.

We have heard learned counsel for the petitioner and have gone through the material placed on record.

4. In order to appreciate the controversy in question, one needs to refer to the instructions dated 05.05.2022, the relevant portion whereof reads as under:-

“I am directed to refer to the subject cited above. In this connection, it is submitted that in the recent past it has been observed that there is a Mushroom growth of Veterinary Pharmacist Institutes. It seems that in the near future, the scope for employment for Diploma Holders in the field as Veterinary Pharmacist is limited. In order to bring uniformity and to curtail Mushroom growth of

Veterinary Pharmacist Institutes it has been decided that henceforth onwards no fresh institute be granted permission.

You are, therefore, requested that such fresh proposal regarding opening of new institutes be sent after policy decision is taken in this regard.”

5. Evidently, the aforesaid instructions only communicate the policy decision taken by the Government whereby it has been decided not to grant permission to the Veterinary Pharmacist Institutes in order to bring uniformity and curtail the mushroom growth of Veterinary Pharmacist Institutes, as it leaves no scope of employment to the diploma holders, in future.

6. It is more than settled proposition of law that the Court should refrain from interfering with the policy decision unless a policy decision taken by the government is demonstratively capricious or arbitrary or suffers from vice of discrimination or infringes any statutes or provisions of the constitution.

7. It is also well settled that the Courts in exercise of their power of judicial review do not ordinarily interfere with the policy decision of the executive unless the policy can be faulted on grounds of malafide, unreasonableness, arbitrariness or unfairness. Indeed, arbitrariness, irrationality, perversity and malafide will render the policy unconstitutional. It is neither

within the domain of the Courts nor the scope of judicial review to embark upon an inquiry as to whether a particular policy is vice or whether better public policy can be involved. Nor are the Courts inclined to strike down the policy at the behest of the petitioner, merely because it has been urged that a different policy could have been fairer or wiser or more scientific or more logical.

8. Courts do not and cannot act an appellate authority examining the correctness, suitability and appropriateness of a policy, nor the courts advise to the executive on matters of policy which the executive is entitled to formulate.

9. The scope of judicial review when examining the policy of the government is to check whether it violates the fundamental rights of the citizen or is opposed to any statutory provisions or manifestly arbitrary.

10. The *raison d'être* of discretionary power is that it promotes the decision-maker to respond appropriately to the demands of a particular situation. When the decision-taking is policy-based, judicial approach to interfere with such decision-making becomes narrower. In such cases, in the first instance, it is to be examined as to whether the policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies

these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy. ◊

11. Adverting to the pleadings of this case, we find the petition to be totally ill-founded and based on complete misunderstanding of law. No doubt, the State has enacted the H.P. Para Veterinary Council Act, 2010 and the Rules but that does not either mean that the State Government is obliged or bound to make admission to the course only because the Act and Rules are in place.

12. It has specifically come in the decision taken by the Government that the scope of employment for diploma holders in the field of Veterinary Pharmacist is limited, and therefore, in order to bring about uniformity and to curtail mushroom growth of Veterinary Pharmacist Institutes, the government has taken a policy decision not to grant any permission for fresh institute henceforth. The reason so assigned cannot be termed to be even illogical much less illegal.

13. Merely because the petitioner fulfills and qualifies all the prerequisite and conditions for grant of permission for opening Para Veterinary Institute as alleged, this itself creates no right upon the petitioner and a corresponding obligation upon the respondents to grant permission.

14. Clearly, the petition is misconceived and the same is accordingly dismissed at the threshold, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

10th March, 2023 sanjeev

(Virender Singh)
Judge

High Court