

**THE HONOURABLE SRI JUSTICE K. LAKSHMAN**

**W.P.Nos.4319, 4356, 4809, 5319, 5668, 6656, 6741, 5672, 5198 of 2023**

**COMMON ORDER:**

Lis involved in these writ petitions is one and the same and therefore, they are heard together and decided by way of this common order

2. Heard Sri Tarun G.Reddy, Sri T.Suryakaran Reddy, learned Senior Counsel, representing Sri Tera Rajnikanth Reddy, learned counsel for the petitioners, Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing for Union of India and Sri Dama Saichand, learned counsel appearing for Pharmacy Council of India. Perused the record.

3. The petitioners are the registered Societies and the Colleges run by the said Registered Societies. They have filed these writ petitions to declare the action of the 1<sup>st</sup> respondent in issuing notifications dated 02.02.2023 and 08.02.2023 for the Academic Year 2023-24 to the extent of increasing the Pharmacy Education Regulatory Charges ( for short, 'PERC') to be paid by the petitioner Institutions for the courses of Bachelor of Pharmacy (B.Pharm), Doctor of Pharmacy (Pharm-D) and Master of Pharmacy (M.Pharm) as illegal and consequently to direct the

1<sup>st</sup> respondent not to charge any amounts towards Annual Pharmacy Education Regulation Charges in excess of the amounts specified in the notification, dated 04.05.2018.

4. The petitioners sought to declare the aforesaid notifications dated 02.02.2023 and 08.02.2023 issued by 1<sup>st</sup> respondent enhancing the PERC on the following grounds:-

- i. 1<sup>st</sup> respondent increased the amount exorbitantly without any basis, without considering any material and without assigning any reasons.
- ii. The petitioners have submitted their proposals with the Telangana State Admission and Fee Regulatory Committee (TAFRC) in March 2022 by which date the notification dated 04.05.2018 is in force.
- iii. While increasing the fee, the Director of Respondent No.1 has to put all the stakeholders on notice and afford an opportunity. No notice was served on the petitioners and no opportunity was given to them while issuing notifications dated 02.02.2023 and 08.02.2023. The said action of the 1<sup>st</sup> respondent is contrary to the principle laid down by the

Apex Court in **Kandivali Coop. Industrial Estate V. Municipal Corp. Greater Mumbai**<sup>1</sup>.

iv. In the Pharmacy Council of India Act, 1948 (for short, 'the Act'), there is no provision to increase fee by the 1<sup>st</sup> respondent and there is procedure for making regulations. In the present case, the 1<sup>st</sup> respondent without following the said procedure and without power issued the aforesaid two notifications dated 02.02.2023 and 08.02.2023 enhancing the fee.

5. Whereas, 1<sup>st</sup> respondent had filed counter contending as follows:-

- i. It has power to issue regulations to regulate Pharmacy Education as per the Act. Accordingly, they have issued regulations and increased PERC by way of issuing the aforesaid notifications dated 02.02.2023 and 08.02.2023.
- ii. The PCI Act is a special statute and it will prevail over the other Acts.
- iii. The Members of Expert Committee of 1<sup>st</sup> respondent considered various aspects including expenditure to be

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<sup>1</sup>(2015) 11 SCC 161

incurred by it, taken decision/passed resolution dated 16.06.2022 to enhance PERC. There is no error in it.

- iv. After obtaining advice of the members of Expert Committee only, 1<sup>st</sup> respondent has taken a decision/passed resolution dated 16.06.2022 and in pursuance of the said decision/resolution, 1<sup>st</sup> respondent has issued aforesaid notifications enhancing the PERC. There is no change to the said resolution.
- v. The petitioners while accepting the PERC issued by 1<sup>st</sup> respondent vide notification dated 04.05.2018, cannot now contend that 1<sup>st</sup> respondent is not having power to issue said notifications enhancing the PERC.

6. In view of the said rival submissions, it is relevant to refer the scheme of the Act and some relevant Sections of the PCI Act are extracted below:-

**Section 10. Education Regulations.**

(1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe--

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations.

(3) Copies of the draft of the Education Regulations and of all Subsequent amendments thereof shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under sub-section (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct.

(5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit.

## **Section 12. Approved courses of study and examinations.**

(1) Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the States which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination.

**Section 13. Withdrawal of approval.**

(1) Where the Executive Committee reports to the Central Council that an approved course of study or an approved examination does not continue to be in conformity with the Education Regulations, the Central Council shall give notice to the authority concerned of its intention to take into consideration the question of withdrawing the declaration of approval accorded to the course of study or examination, as the case may be, and the said authority shall within three months from the receipt of such notice forward to the Central Council through the State Government such representation in the matter as it may wish to make.

(2) After considering any representation which may be received from the authority concerned and any observations thereon which the State Government may think fit to make, the Council may declare that the course of study or the examination shall be deemed to be approved only when completed or passed, as the case may be, before a specified date.

**Section 14. Qualifications granted outside the territories to which this Act extends.**

The Central Council, if it is satisfied that any qualification in pharmacy granted by an authority outside the <sup>1</sup>[territories to which this Act extends], affords a sufficient guarantee of the requisite skill and knowledge, may declare such qualification to be an approved qualification for the purpose of qualifying for registration under this Act, and may for reasons appearing to it sufficient at any time declare that such qualification shall be deemed subject to such additional conditions, if any, as may be specified by the Central Council, to be approved only when granted before or after a specified date:

Provided that no person other than a <sup>3</sup>[citizen of India] possessing such qualification shall be deemed to be qualified for registration unless by the law and practice of the State or country in which the qualification is granted, persons of Indian origin holding such qualification are permitted to enter and practise the profession of pharmacy.

**Section 15. Mode of declarations.**

All declarations under section 12, section 13 or section 14 shall be made by resolution passed at a meeting of the Central Council, and shall have effect as soon as they are published in the Official Gazette.

**Section 15A. The Central Register.**

**15A. The Central Register.**--(1) The Central Council shall cause to be maintained in the prescribed manner a register of pharmacists to be known as the Central Register, which shall contain the names of all persons for the time being entered in the register for a State.

(2) Each State Council shall supply to the Central Council five copies of the register for the State as soon as may be after the first day of April of each year, and the Registrar of each State Council, shall inform the Central Council, without delay, all additions to, and other amendments in, the register for the State made from time to time.

(3) It shall be the duty of the Registrar of the Central Council to keep the Central Register in accordance with the orders made by the Central Council, and from time to time to revise the Central Register and publish it in the Gazette of India.

(4) The Central Register shall be deemed to be public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872) and may be proved by the production of a copy of the Register as published in the Gazette of India.

**15B. Registration in the Central Register.**--The Registrar of the Central Council shall, on receipt of the report of registration of a person in the register for a State, enter his name in the Central Register.

#### **Section 16. Inspection.**

(1) The Executive Committee may appoint such number of Inspectors as it may deem requisite for purposes of this Chapter.

(2) An Inspector may--

(a) inspect any institution which provides an approved course of study;

(b) attend at any approved examination;

(c) inspect any institution whose authorities have applied for the approval of its course of study or examination under this Chapter, and attend at any examination of such institution.

(3) An Inspector attending at any examination under sub-section (2) shall not interfere with the conduct of the examination, but he shall report to Executive Committee on the sufficiency of every examination he attends and on any other matter in regard to which the Executive Committee may require him to report.

(4) The Executive Committee shall forward a copy of every such report to the authority or institution concerned, and shall also forward a copy together with any comments thereon which the said authority or institution may have made, to the Central Government and to the Government of the State in which the authority or institution is situated.

**Section 18. Power to make regulations.**

(1) The Central Council may, with the approval of the Central Government, <sup>1</sup>[by notification in the Official Gazette,] make regulations consist with this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for--

- (a) the management of the property of the Central Council;
- (b) the manner in which elections under this Chapter shall be conducted;
- (c) the summoning and holding of meetings of the Central Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (d) the functions of the Executive Committee, the summoning and holding meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;
- (e) the powers and duties of the President and Vice-President;
- (f) the qualifications, the term of office and the powers and duties of the Registrar, Secretary, Inspectors and other officers and servants of the Central Council, including the amount and nature of the security to be furnished by the Registrar or any other officer or servant.
- (g) the manner in which the Central Register shall be maintained and given publicity;
- (h) constitution and functions of the committees other than Executive Committee, the summoning and holding of meetings thereof, the time and place at which such meetings shall be held, and the number of members necessary to constitute the quorum.

(3) Until regulations are made by the Central Council under this section, the President may, with the previous sanction of the Central Government, make such regulations under this section, including those to provide for the manner in which the first elections to the Central Council shall be conducted, as may be necessary for carrying into effect the provisions of this Chapter, and any regulations so made may be altered or rescinded by the Central Council in exercise of its powers under this section.

(4) Every regulation made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more



successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

**Section 41. Penalty for falsely claiming to be registered.**

(1) If any person whose name is not for the time being entered in the register of the State falsely pretends that it is so entered or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment extending to six months or with fine not exceeding one thousand rupees or with both:

Provided that it shall be a defence to show that the name of the accused is entered in the register of another State and that at the time of the alleged offence under this section an application for registration in the State had been made.

(2) For the purposes of this section--

(a) it shall be immaterial whether or not any person is deceived by such pretence or use as aforesaid:

(b) the use of the description "pharmacist", "chemist", "druggist", "pharmaceutist", "dispenser", "dispensing chemist", or any combination of such words <sup>1</sup>[or of any such word with any other word] shall be deemed to be reasonably calculated to suggest that the person using such description is a person whose name is for the time being entered in the register of the State.

(c) the onus of proving that the name of a person is for the time being entered in the register of a State shall be on him who asserts it.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or <sup>1</sup>[any officer authorized in this behalf by the State Government or by order of] the Executive Committee of the State Council.

**Section 42. Dispensing by unregistered persons.**

(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, no person other than a registered

pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner;

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner:

Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that State on the expiry of a period of eight years from the commencement of the Pharmacy (Amendment) Act, 1976 (70 of 1976).

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council.

7. 1<sup>st</sup> respondent/PCI is statutory body working under the PCI Act. The said Act was enacted to make better provisions for the regulation of the profession and practice of Pharmacy throughout the country. PCI is empowered not only to regulate the profession of Pharmacy but also the educational institutions from which the persons may obtain relevant qualifications. The Act also creates 1<sup>st</sup> respondent in order to set up a body that is empowered to regulate the Pharmacy education and the pharmacy profession in India. It has been empowered to determine and enforce the qualifications required for a person to practice as a Pharmacist in India, including which institution may offer the appropriate courses of education to enable one to practice as a

pharmacist. Only a person with the appropriate level of expertise and education in the field of Pharmacy is permitted to practice the profession. 1<sup>st</sup> respondent has power to make regulations with the approval of the Central Government and to prescribe the minimum standard of education in accordance with Section 10 of the PCI Act which also provides for the procedure to be adopted in making these Regulations. Thus, 1<sup>st</sup> respondent/PCI not only regulate the profession of Pharmacy itself but also plays a vital role in regulating entry into the profession, laying down minimum standards of education, approving the courses and examination which constitute appropriate qualifications to be registered as a pharmacist under Section 32(2) of the Act.

8. It is also relevant to note that Section 3 of the Act deals with the constitution and composition of the Central Council and the same is also extracted below:-

**Section 3-Constitution and Composition of Central Council.**—The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely:—

(a) six members, among whom there shall be at least one teacher of each of the subjects, pharmaceutical chemistry, pharmacy, pharmacology and pharmacognosy elected by the University Grants Commission from among persons on the teaching staff of an Indian University or a college affiliated thereto which grants a degree or diploma in pharmacy;

(b) six members, of whom at least four shall be persons possessing a degree or diploma in, and practising pharmacy or pharmaceutical chemistry, nominated by the Central Government;

- (c) one member elected from amongst themselves by the members of the Medical Council of India;
- (d) the Director General, Health Services, ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;
- (dd). the Drugs Controller, India, ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;
- (e) the Director of the Central Drugs Laboratory, ex officio;
- (f) a representative of the University Grants Commission and a representative of the All India Council for Technical Education;
- (g) one member to represent each State elected from amongst themselves by the members of each State Council, who shall be a registered pharmacist;
- (h) one member to represent each State nominated by the State Government, who shall be a registered pharmacist;

Provided that for five years from the date on which the Pharmacy (Amendment) Act, 1976, comes into force the Government of each Union territory shall, instead of electing a member under clause (g) nominate one member, being a person eligible for registration under section 31, to represent that territory.

9. Thus, in order to fulfill the objectives of the Act, the powers and responsibilities granted to the PCI under the PCI Act, are extracted below:-

- i. To prescribe minimum standard of education required for qualifying as a pharmacist i.e. framing of Education Regulations prescribing the conditions to be fulfilled by the institutions seeking approval of the PCI for imparting education in pharmacy.

- ii. To ensure uniform implementation of the educational standards throughout the country.
- iii. To approve the courses of study and examination for pharmacists i.e. approval of the academic training institutions providing pharmacy courses.
- iv. To withdraw approval, if the approved course of study or an approved examination does not continue to be in conformity with the educational standards prescribed by the PCI.
- v. To approve qualifications granted outside the territories to which the Pharmacy Act extends the approval of foreign qualification
- vi. To maintain the Central Register of Pharmacists

Thus, the PCI has power to prescribe the PERC and Security Deposit.

10. By invoking the powers laid down under Sections 10 and 18 of the Act, 1<sup>st</sup> respondent had issued regulations in respect of Bachelor of Pharmacy (B.Pharm), Doctor of Pharmacy (Pharm-D) and Master of Pharmacy (M.Pharm) and the same are mentioned below:-

**The Bachelor of Pharmacy (B.Pharm.) Course Regulations, 2014**

9. Approval of the authority conducting the course of study. --

1. No person, institution, society, trust or university shall start and conduct B. Pharm programme without the prior approval of the Pharmacy Council of India.

2. Any person or pharmacy college for the purpose of obtaining permission under sub-section (1) of section 12 of the Pharmacy Act, shall submit a scheme as may be prescribed by the Pharmacy Council of India.
3. **The scheme referred to in sub-regulation (2) above, shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed:**

Provided that the Pharmacy Council of India shall not approve any institution under these regulations unless it provides adequate arrangements for teaching in regard to building, accommodation, labs., equipments, teaching staff, non-teaching staff, etc., as specified in Appendix-A to these regulations.

### **Pharm.D. Regulations 2008**

Regulations framed under section 10 of the Pharmacy Act, 1948 (8 of 1948). (As approved by the Government of India, Ministry of Health vide, letter No.V.13013/1/2007-PMS, dated the 13th March, 2008 and notified by the Pharmacy Council of India).

No.14-126/2007-PCI.— In exercise of the powers conferred by section 10 of the Pharmacy Act, 1948 (8 of 1948), the Pharmacy Council of India, with the approval of the Central Government,

6. Institutions running B.Pharm programme approved under section 12 of the Pharmacy Act, will only be permitted to run Pharm.D. programme. Pharm.D. (Post Baccalaureate) programme will be permitted only in those institutions which are permitted to run Pharm.D. programme.

9. Approval of the authority conducting the course of study. – (1) No person, institution, society or university shall start and conduct Pharm.D or Pharm.D. (Post Baccalaureate) programme without the prior approval of the Pharmacy Council of India.

(2) Any person or pharmacy college for the purpose of obtaining permission under sub-section (1) of section 12 of the Pharmacy Act, shall submit a scheme as prescribed by the Pharmacy Council of India.

**(3) The scheme referred to in sub-regulation (2) above, shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed:**

Provided that the Pharmacy Council of India shall not approve any institution under these regulations unless it provides adequate arrangements

for teaching in regard to building, accommodation, labs., equipments, teaching staff, non-teaching staff, etc., as specified in Appendix-B to these regulations.

**The Master of Pharmacy (M.Pharm) Course Regulations, 2014**

4. Approval of Post Graduate Pharmacy courses and examination.

4.1 a) No person, institution, society or university shall start and conduct M.Pharm programme or increase number of admissions without the prior approval of the Pharmacy Council of India.

b) Any person, institution, society or university for the purpose of obtaining approval under sub-section (1) of section 12 of the Pharmacy Act shall submit a scheme.

**c) The scheme referred to in sub-regulation (b) above, shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed by the Pharmacy Council of India.**

d) The approval to a Post Graduate Course shall be granted initially for a specified period not exceeding 5 year. after which it shall have to be renewed.

e) The procedure for 'Renewal' of approval shall be same as applicable for the grant of approval.

f) Failure to seek timely renewal of approval as required in sub-regulation-4(d) shall invariably result in stoppage of admissions to the concerned Post Graduate course.

11. It is the specific contention of 1<sup>st</sup> respondent that it has power to make regulations as per Section 10 of the Act. By invoking the said provision, it has issued the aforesaid regulations in respect of Bachelor of Pharmacy (B.Pharm). Doctor of Pharmacy (Pharm-D) and Master of Pharmacy (M.Pharm). The Central Council of the PCI was constituted under Section 3 of the Act comprising of 6 experts in the field of pharmacy, pharmaceutical chemistry, pharmacology, etc. elected by the

UGC, 6 nominated members of Central Government and representatives of Medical Council of India, the Director General Health Services, Drugs Controller India, Director of Central Drugs Laboratory, UGC, AICTE and one member to represent each of the State Pharmacy Council. Therefore, the decision taken by the 1<sup>st</sup> respondent including PERC is taken after consulting the experts which represents UGC, AICTE and even State Governments.

12. By invoking the said powers, 1<sup>st</sup> respondent has framed regulations dated 04.05.2018. Thereafter, new PERC was approved by PCI vide its decision dated 16.06.2022. Though counter was filed by the 1<sup>st</sup> respondent with the aforesaid contentions, no reply was filed denying the same. Thus, 1<sup>st</sup> respondent has taken a decision on 16.06.2022 approving the new PERC. Notification dated 02.02.2023 and 08.02.2023 are only consequent to the aforesaid decision dated 16.06.2022. There is no challenge to the said decision. The challenge is only to the aforesaid notifications dated 02.02.2023 and 08.02.2023 which are consequential to the decision dated 16.06.2022.

13. It is also specific contention of the 1<sup>st</sup> respondent that it has entered into Memorandum of Understanding (MOU) with NIC, Hyderabad for hosting and maintain PCI's flagship software application,



DIGI-PHARMed, for the past five years. Therefore, all the costs were being borne by NIC(Govt.Agency). However, the MOU with NIC, Hyderabad will be expiring on 23.04.2023. Therefore, the costs of all services will be borne by PCI Independently. The said costs would include but not limited to the costs of servers, storage, technical manpower required to maintain the software application etc. 1<sup>st</sup> respondent has also to maintain all the data of approximate more than 5000 pharmacy institutions across the country. The value of such services incurred, will amount in Crores. Therefore, 1<sup>st</sup> respondent has decided to revise to adjust the increased financial burden on PCI by way of issuing revised PERC.

14. It is also the specific contention of the 1<sup>st</sup> respondent that the number of institutions have increased manifold and therefore, the 1<sup>st</sup> respondent is required to add man force for proper functioning. It is also working in upliftment of Pharmacy Teacher, Institutions and students by granting PG Scholarship, conducting seminar, research/travel grants to faculty of Pharmacy. PCI will also hold an entrance exam for D.Pharm. Taking all these factors into consideration, the 1<sup>st</sup> respondent decided the revised PERC on 16.062022 applicable to the Academic Year 2023-

24. Therefore, according to the petitioners, there is no error in it and in the consequential notifications dated 02.02.2023 and 08.02.2023.

15. Thus, the aforesaid facts would reveal that the 1<sup>st</sup> respondent is having power to frame regulations in terms of Section 10 of the Act and accordingly by invoking the said powers, 1<sup>st</sup> respondent had issued aforesaid regulations. It has power to revise PERC. It is also having Expert Committee consisting the aforesaid members. The entire material was placed before the said Executive Committee (EC) to discuss the revision in PERC in Pharmacy courses. The EC has also considered the interim order granted by the Apex Court directing the PCI to open the portal for new instructions and for processing the applications. It has also considered the fee structure of the other sister Councils like MCI, INC, DCI and AYUSH etc., and the same was examined and a decision was taken that fee charged by PCI is very less as compared to other sister Councils. Since professional activities of the Council are increasing day by day and Council requires funds for GPAT, research grants, refresher courses, CBIT Scheme etc., and hence there is an urgent need to strengthen the PCI Resources. On consideration of the said aspects, a decision was taken to revise PERC in the EC meeting of 1<sup>st</sup> respondent held on 16.06.2022, 1<sup>st</sup> respondent has filed minutes of

the EC meeting dated 16.06.2022. There is no challenge to the said decision.

16. Pursuant to the decision taken by EC in its meeting held on 16.06.2022, 1<sup>st</sup> respondent has issued notification dated 02.02.2023 enhancing the fee structure and the same was reduced by way of issuing clarificatory notification dated 08.02.2023. The same are mentioned below:-

Course Name	APERC Amount for A.Y. 2022-23	Initial APERC Amount for A.Y. 2023-24	Revised Amount for A.Y. 2023-24
B.Pharm	1,00,000/-	4,00,000/-	2,00,000/-
Pharm.D	1,00,000/-	6,00,000/-	3,00,000/-
M.Pharm	50,000/-	2,00,000/-	1,00,000/-

In the revised notification dated 08.02.2023, there is specific mention about the PERC notification dated 02.02.2023 and in the EC meeting of the 1<sup>st</sup> respondent dated 08.02.2023, and a decision was taken to revise the PERC. It was also decided that security deposit will not be charged for the Academic Year 2023-24.

17. Thus, according to this Court, the 1<sup>st</sup> respondent is having power to issue revised PERC to meet its objectives and it has also obtained the opinion of the Experts Committee consisting of the aforesaid members. Therefore, according to this Court, there is no error in the notifications dated 02.02.2023 and 08.02.2023. The contention of

the petitioners that they have submitted proposals to TAFRC in 2018 as on the said date, PERC issued vide notification dated 04.05.2018 were enforced and therefore, 1<sup>st</sup> respondent cannot issue notifications dated 02.02.2023 and 08.02.2023 enhancing PERC cannot be considered.

18. It is relevant to note that the petitioners have submitted proposals with TAFRC with regard to fee to be charged from the students and not with regard to PERC. In the said proposals, they have to mention the expenditure. As held by Apex Court in **Pharmacy Council of India Vs. Dr.SK Toshniwal Educational Trusts Vidharbha Institute of Pharmacy**<sup>2</sup>, the PCI Act prevails over the other Acts. The relevant paragraphs are extracted below:-

4.6. That pharmacy is one of the several disciplines/subjects where the legislature has laid down that for imparting education in that subject, the minimum standards are to be prescribed by an autonomous statutory body comprising of eminent professionals in the field. It is submitted that they not only prescribe the standard of education of different courses in the discipline/subject, they also lay down eligibility conditions for students as well as teachers, course content, standards for evaluation of examination etc. It is submitted that they also approve the courses in the subject in colleges/institutions on the basis of the laid down norms by verification by inspections: It is submitted that the law also deals with the registration of the professionals in that discipline as well as their subsequent conduct as registered professionals.

4.7 that it is very much important and/or necessary that the autonomous Statutory authority which is made obliged to supervise and monitor the conduct of professionals by the legislature in a particular discipline is also given a free hand to decide about the standards of education, approval of courses/institutions evaluation of standards of examination and thereafter grant of registration.

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<sup>2</sup> (2021) 10 SCC 657

4.8. That the legislature has clearly envisaged only one autonomous statutory authority to undertake all these integrated functions and it is impossible to conceive that in the same very occupied field, another statutory authority, seeks to assume/usurp jurisdiction thereby creating unsavoury practical problems, conflicts and inconsistencies, thereby defeating the entire objective sought to be achieved by the special law.

4.9. That subject of pharmacy is a special and not a general subject. It is submitted that it has been exhaustively dealt with by Parliament through the Pharmacy Act which exhaustively covers all areas inclusive of approval of courses, laying down course content, eligibility conditions for students as well as teachers, evaluation of standards of examination, grant of registration, taking action for any infamous conduct, etc. It is submitted that this entire legislative objective is achieved through the Pharmacy Act and the statutory rules and regulations made thereunder.

4.10. That Section 10 of the Pharmacy Act empowers PCI to frame Education Regulations prescribing the minimum standards of education required for qualification as a pharmacist. It is submitted that as per Section 10(2), such Education Regulations may prescribe-

- (a) the nature and period of study and of practical training to be undertaken before admission to an examination.
- (b) the equipment and facilities to be provided for students undergoing approved courses of study;
- (c) the subjects of examination and the standards therein to be attained;
- (d) any other conditions of admission to examinations.

12.4. In exercise of powers vested in the Pharmacy Act, PCI has framed a number of regulations for prescribing minimum standards of education as well as regulating the subject of pharmacy in India, including:

- a) The Education Regulations, 1991;
- (b) The Pharm-D Regulations, 2008;
- (c) The Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014;
- (d) The Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014;
- (e) The Master of Pharmacy (M: Pharm) Course Regulations, 2014;
- (f) The Bachelor of Pharmacy Practices Regulations, 2014

(g) The Pharmacy Practice Regulations, 2015.

17. We are in complete agreement with the view taken by this Court in **Shri Prince Shivaji Maratha Boarding House's College of Architecture**<sup>3</sup>. Otherwise on merits also, as observed and held hereinabove, the Pharmacy Act which is a special Act in the field of pharmacy shall prevail and consequently so far as the recognition of degrees and diplomas of pharmacy education is concerned the Pharmacy Act shall prevail. As observed hereinabove, PCI constituted under the provisions of the Pharmacy Act which is consisting of the experts in the not or pharmacy and/or related subjects shall prevail. Consequently, the norm and regulations set by PCI and other specified authorities under the Pharmacy Act would have to be followed by an institution imparting education for degrees and diplomas in pharmacy.

20. In view of the above and for the reasons stated above, it is held that in the field of pharmacy education and more particularly so far as the recognition of degrees and diplomas of pharmacy education is concerned, the Pharmacy Act, 1958 shall prevail. The norms and regulations set by PCI and other specified authorities under the Pharmacy Act would have to be followed by the institutions concerned imparting education for degrees and diplomas in pharmacy, including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of PCI shall only be followed by the institutions imparting degrees and diplomas in pharmacy. The questions are answered accordingly.

Therefore, the said contention of the petitioners is unsustainable.

19. As discussed supra, 1<sup>st</sup> respondent is having power to issue regulations under the Act, it has issued the aforesaid regulations. They have obtained opinion of Expert Committee and the same was considered in its Executive Committee meeting dated 16.06.2022 and issued notification dated 02.02.2023 and 08.02.2023. Therefore, there is no irregularity in the same.

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<sup>3</sup> (2021) 12 SCC 629

20. As discussed supra, while issuing the aforesaid notifications, 1<sup>st</sup> respondent has taken the opinion of the Expert Committee constituted in terms of Section 3 of the Act and therefore, this Court cannot substitute its view by exercising its power under Article 226 of the Constitution of India, unless the petitioners establish arbitrariness, procedural violation, jurisdiction, this Court cannot consider the said contentions of the petitioners. In the present case, petitioners failed to establish any such violation. Therefore, the writ petitions are liable to be dismissed.

21. In the result, these writ petitions are dismissed. Interim order shall stand vacated.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

**SD/-I. NAGALAKSHMI**  
**DEPUTY REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

To,

1. Union of India, Through Ministry of Health and Family Welfare Department Of Higher Education, rep. by its Secretary Nirman Bhavan, New Delhi.
2. The Pharmacy Council of India, Rep. by its Registrar-cum-Secretary N.B.C.C. Center, 3rd Floor, Plot No.2, Community Center Maa Anandamayee Margh, Okhla Phase-I New Delhi.
3. One CC to Sri Tarun G. Reddy Advocate [OPUC]
4. One CC to Sri Gadi Praveen Kumar, Deputy Solicitor General of India [OPUC]
5. One CC to Sri Dama Saichand, SC for Pharmacy Council of India (OPUC)
6. One CC to Sri T. Rajanikanth Reddy, Advocate(OPUC)
7. One CC to Sri P. Pandu Ranga Reddy, Advocate(OPUC)
8. One CC to Sri N. S. Arjun Kumar, Advocate(OPUC)
9. One CC to Sri K.V. Rusheek Reddy, Advocate(OPUC)
10. One CC to Sri Gollakota Satya Jagannath, Advocate(OPUC)
11. Two CD Copies

MBC  
GJP

**HIGH COURT**

**DATED: 10/04/2023**



**COMMON ORDER**

**WP NOS: 4319, 4356, 4809, 5319, 5668, 6656, 6741,  
5672 AND 5198 OF 2023**

**DISMISSING THE WRIT PETITIONS**

**WITHOUT COSTS**

13  
*[Handwritten Signature]*  
11/04/2023