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2024:DHC:4817

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 29 April 2024
Pronounced on : 1 July 2024

\+ **W.P.(C) 617/2024 and CM APPL. 2723/2024**

SLS COLLEGE OF PHARMACY .... Petitioner

versus

PHARMACY COUNCIL OF INDIA .....Respondent

AND

+ W.P.(C) 744/2024 and CM APPL. 3268/2024

KRISHNA INSTITUTE OF PHARMACEUTICAL SCIENCE AND RESEARCH Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 798/2024 and CM APPL. 3436/2024

R K COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 813/2024 and CM APPL. 3503/2024

SHRI SHYAMDAS BABA PHARMACY COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 816/2024 and CM APPL. 3511/2024

RAJESH KUMAR SADHANA DEVI MAHAVIDYALAY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 817/2024 and CM APPL. 3513/2024

S MD COLLEGE Versus PHARMACY COUNCIL OF INDIA

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+ W.P.(C) 827/2024 and CM APPL. 3527/2024

RAJ RANI MAHAVIDHYALAYA FACULTY OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 835/2024 and CM APPL. 3543/2024

SRS COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 837/2024 and CM APPL. 3546/2024

MAA SHAKUNTALA DEVI MAHAVIDHYALAYA AND HOSPITAL Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 838/2024 and CM APPL. 3548/2024

SHRI TEJ SINGH GAJADHAR COLLEGE, DEPARTMENT OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 842/2024 and CM APPL. 3557/2024

PRAKASH MAHAVIDHYALAY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 844/2024 and CM APPL. 3562/2024

SRS EDUCATION INSTITUTE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 1188/2024 and CM APPL. 4979/2024

SHRI KRISHNA MAHAVIDYALYA OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 1829/2024

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DAU GAUTAM COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2030/2024

SHREE SIDDHI VINAYAK COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2034/2024

JAN UTHAN COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2042/2024

GUL GAUTAM COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2060/2024

SHYAMA SHYAM INSTITUTE OF MEDICAL SCIENCE AND RESEARCH Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2270/2024

SRI KISHUN COLLEGE Versus PHARMACY COUNCIL OF INDIA

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DIGAMBER JAIN COLLEGE OF EDUCATION Versus PHARMACY COUNCIL OF INDIA

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SHRI GURU HAR GOVIND SAHABH JI MEMORIAL COLLEGE OF EDUCATION Versus PHARMACY COUNCIL OF INDIA

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SHREE VISHNU COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2291/2024

MANDAWAR COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2293/2024

S S BAPU PHARMACY COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2294/2024

MAHARAJA AGRASEN COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2296/2024

MODERN COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2297/2024

VINEETA COLLEGE OF PHARMACY AND RESEARCH Versus PHARMACY COUNCIL OF INDIA

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+ W.P.(C) 2307/2024

MANGALMAY PHARMACY COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2313/2024

INDIAN INSTITUTE OF MEDICAL SCIENCE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2318/2024

MD COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2319/2024

SATYADEV INSTITUTE OF MANAGEMENT AND TECHNOLOGY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2320/2024

M.D. COLLEGE OF HIGHER STUDIES Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2377/2024

LORD KRISHNA INSTITUTE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2378/2024

BILLAH COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2379/2024

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DR RAM MANOHAR LOHIA INSTITUTE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2380/2024

LOTUS INSTITUTE OF MANAGEMENT Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2381/2024

VIDYA COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2388/2024

GAHLAUT PHARMACY COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2390/2024

INDRAPRASTHA INSTITUTE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2395/2024

SAKSHI COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2399/2024

MODERN INTERNATIONAL COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2400/2024

PAL INSTITUTE OF MEDICAL SCIENCE Versus PHARMACY COUNCIL OF INDIA

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+ W.P.(C) 2401/2024

J P COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2402/2024

DR RAM MANOHAR LOHIA COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2403/2024

SIGNA COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2405/2024

JYOTIRADITYA INSTITUTE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2406/2024

SAINATH COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2411/2024

JMS PHARMACY COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2412/2024

SGGS COLLEGE OF PHARMACY AND RESEARCH CENTRE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2420/2024

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I E T COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2423/2024

N K COLLEGE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2434/2024

INDIAN INSTITUTE OF MEDICAL SCIENCE Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2439/2024

B R COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2444/2024

SAMARPAN COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2446/2024

PARMARTH COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2450/2024

RAMCHANDER MEMORIAL COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2628/2024

ANKERITE COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

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+ W.P.(C) 2659/2024

LTR INSTITUTE OF TECHNOLOGY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2671/2024

ADESH COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 2679/2024

SEIKO COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3312/2024

DR OM PRAKASH SCHOOL OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3314/2024

MAA KUNTI DEVI COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3317/2024

RAVI COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3319/2024

POINEER INSTITUTE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3320/2024

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AKSHITA COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3322/2024

DR OM PRAKASH COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 3342/2024

SRAJAN COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

+ W.P.(C) 4193/2024

SWAMI VIVEKANAND COLLEGE OF PHARMACY Versus PHARMACY COUNCIL OF INDIA

For the Petitioners :

Mr. Sanjay Sharawat and Mr. Ashok Kumar, Advocates

For the Respondents :
Mr. Vinay Kumar Garg Senior Advocate with Mr. Ajay Kumar Singh, Mr. K.S. Rekhi, Mr. Parv Garg and Mr. Pawas Kulshrestha, Advs. for Pharmacy Council of India
Mr. Aly Mirza, Adv.
Mr. Vibhas Tripathy, AR(Legal), IGNOU
Mr. Vikrant N. Goyal, Ms. Anushka Jaiswal, Mr. Abhishrat Singh and Ms. Satvika Goyal, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

% 01.07.2024

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1. The issue in controversy in all these writ petitions is identical. The judgment is, therefore, being rendered by referring to the facts in WP (C) 617/2024 which, by consent, was treated as the lead case. The findings and conclusions would apply, *mutatis mutandis*, to all writ petitions.

W.P. (C) 617/2024

The *lis*

2. The petitioner-institution runs programs, the successful pursuit of which results in the award of B. Pharm, M. Pharm, D. Pharm and Pharm. D degrees. Approval to conduct the said programs is, admittedly, granted and governed by Section 12[1] of the Pharmacy Act, 1948[2].

3. The petitioner challenges Clauses 10(ii), (iii) and (iv) and 11(v) of a communication dated 14 December 2023 issued by the Pharmacy Council of India[3], which requires institutions which are already approved under Section 12 of the Act for conducting B. Pharm or D.

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[1] **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 inquiry 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 State 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.

[2] Hereinafter referred to as "the Act"

[3] Hereinafter "the PCI"

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Pharm courses, to again apply, on a yearly basis, for continuing the approval. "Continuation of approval", according to the petitioner, is a concept foreign, and in fact opposed, to the Act. Approval, once granted, is to the "course", and does not have, therefore, to be renewed yearly. The petitioner also, therefore, challenges the bringing out, by the respondents, of an "Approval Process Handbook 2024-2025", in terms of which existing approved institutions are required to apply for, and obtain, continuation of approval.

4. The petitioner also, therefore, challenges the charging, by the respondent, of Pharmacy Education Regulatory Charges[4] for obtaining "continuation of approval", as required by Clause 8 of the impugned communication dated 14 December 2023 which, too, contends the petitioner, is contrary to the Act and to Article 265[5] of the Constitution of India.

5. The issues in controversy are, therefore, limited. The Court is only required to examine whether the PCI could have called upon the petitioner to apply yearly for continuation of the approval granted to them by the PCI for the B. Pharm or D. Pharm course, and whether the PCI could, for that purpose, charge PERC.

Facts

[4] "PERC", hereinafter

[5] **265. Taxes not to be imposed save by authority of law**. – No tax shall be levied or collected except by authority of law.

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6. *Vide* Circular dated 3 July 2022, the PCI invited applications from new institutions seeking approval for starting Pharmacy courses. The application was to be submitted on a Standard Inspection Form (SIF). The petitioner submitted an application, on the SIF, on 5 August 2022, in response to the Circular. Approval was sought for conducting B. Pharm and D. Pharm courses with intake of 60 students in each course. The SIF required the applicant to state the year of "Starting of Course (Academic Session)". The petitioner entered 2022-2023 as the relevant year, under the said column, for each of the courses. The requisite PERC, for running the said courses, was also deposited by the petitioner.

7. There was, apparently, some delay in processing of the petitioner's application, which provoked the petitioner to approach this Court on multiple occasions, during the course of which, by order dated 2 June 2023, this Court also contemplated initiation of *suo motu* contempt proceedings against PCI. Ultimately, *vide* communication dated 29 November 2023, the PCI granted approval to the petitioner to conduct the B Pharm and D Pharm courses with 60 students' intake in each case. The approval was, however, restricted to one year, i.e. 2023-2024. Consequent on grant of approval as aforesaid, the petitioner applied to its affiliating body, and obtained affiliation for running the B Pharm and D Pharm courses. Owing to the delay in grant of approval, the petitioner could admit only 57 students in its D Pharm program and 18 students in its B Pharm program.

8. The above facts are not in dispute.

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9. On 14 December 2023, the impugned Circular came to be issued, by PCI, with which the petitioner is principally aggrieved. Para 2 of the Circular enlists the nature of applications which could be made and includes, at S. No. i), applications for "continuation of approval". Paras 10 ii), iii) and iv) of the Circular read thus:

> "**10. Cautions.**
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> *****
>
> (ii) All Institutions that are already approved by the PCI for conduct of course/approved under section 12 for registration as a pharmacist for the D. Pharm/B. Pharm/M. Pharm/Pharm. D, Pharm. D (PB)/B. Pharm (Practice) programs have to mandatorily apply on the PCI portal, submitting all the requisite information, related documents and Pharmacy Education Regulatory Charges for consideration of approval.
>
> (iii) Institutions already having approval for 2024-2025 or beyond 2024-2025 academic session shall also mandatorily apply in SIF and paid a mandatory cap pharmacy Education Regulatory Charges for retention of already granted approval.
>
> (iv) Applying for approval is entirely the responsibility of the institution and failure to apply it will result in not being reflected in the approved list of Institutions on the Council's website leading to **"No Admission Year"**."

Annexure C to the impugned communication stipulated the PERC to be paid by the applicants in pursuance of the communication, and included the amount of PERC which was required to be paid by existing institutions, already approved, such as the petitioner, for obtaining continuation of approval.

10. The petitioner claims that, once approval is granted to a course in terms of Section 12 of the Act, it continues so long as the institution provides the course, and can be withdrawn only in the circumstances

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envisaged in Section 13[6] of the Act. The impugned communication, insofar as it requires existing institutions to obtain continuation of the approval already granted to them, in order for them to be regarded as approved institutions for the future, therefore, is violative of the Act.

Rival Contentions

11. I have heard Mr. Sanjay Sharawat, learned Counsel for the petitioner and Mr. Vinay Garg, learned Senior Counsel for the PCI, at length. Learned Counsel have also filed written submissions as well as compilations of judicial authorities on which they placed reliance.

Contentions of Mr. Sharawat on behalf of the petitioner

12. Mr. Sharawat submits that, as the PCI is a creature of the Act, it has to exercise its powers and authorities in accordance with the provisions of the Act. The impugned decision to require existing institutions, which have already been granted approval for their courses under Section 12 of the Act, to apply on a yearly basis for continuation of approval, he submits, is violative of Section 12 of the Act itself. Having been introduced by way of an executive instruction,

[6] **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.

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Mr. Sharawat submits that the impugned decision cannot sustain in law.

13. Mr. Sharawat has drawn my attention to the definition of "approved" as contained in Section 2(b)[7] of the Act. He has also referred to Sections 10[8], 12, 13 and 14[9] of the Act. Section 12, he submits, envisages grant of approval to a "course", and not to one year of a course. The SIF, which is a format devised by the statute, itself envisages the applicant mentioned in the year of "starting of Course" for which approval is being sought. The petitioner had, therefore, sought approval for the B. Pharm and D. Pharm courses starting from the 2022-2023 academic session. The PCI had erroneously granted approval only for the 2023-2024 academic session.

14. Mr. Sharawat also calls into question the legality of the Approval Process Handbook released by the PCI for 2024-2025. As

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[7] (b) "approved" means approved by the Central Council under Section 12 or Section 14;

[8] **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.

[9] **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 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 condition, 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 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.

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the introduction to the Handbook itself declares, it is merely a combination of all existing policies, norms and regulations of the PCI. Clause 5 in the Approval Process Handbook, he submits, again reiterates the illegal requirement of existing institutions obtaining continuation of approval, and requires the institution to do so in accordance with the procedure stipulated in the said Clause.

15. Mr. Sharawat points out that there is no provision, either in the Act or in any of the Regulations framed under the Act, which envisages grant of approval to an institution, for a course, for a fixed time, or continuation of the approval once granted. The Act contains sufficient provisions whereby the PCI can monitor the functioning of the institution and assess, for itself, whether the institution is maintaining the prescribed standards and stipulations. The requirement of an existing institution applying again for continuation of the approval once granted, he submits, is a creation of the impugned communication, with no basis to support it.

16. Mr. Sharawat then adverts to Section 12 of the Act in some detail. He points out that Section 12(1) requires a declaration to be given by the institution regarding the "course of study". Section 12(2) is worded in terms similar to Section 12(1), but envisages grant of approval, by the PCI, for the examination to be held by the approved institution only once, and not yearly. Section 12(3) empowers the PCI to check the functioning of an approved institution by calling on the institution to, from time to time, furnish information regarding the courses of study and training and examination to be undergone, the

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ages at which such courses are required to be undergone, and generally the requisites for such courses. Mr. Sharawat also places reliance on Section 15[10] of the Act which, too, according to him, indicates that the approval for running the course, granted to the institution by the PCI under Section 12, is meant to be permanent in nature.

17. Mr. Sharawat also places reliance on Sections 33 and 34 of the Act. These Sections, which figure in Chapter IV of the Act, deal with the registration of pharmacists. Section 33(1) requires applications for registration to be addressed to the Registrar of the State PCI and Section 33(4) requires the Registrar to, upon entry of a name in the register of pharmacists, issue a certificate of registration. Section 34(1)[11], which is of greater significance, envisages annual payment, by the registered pharmacist, to the State Council, of the renewal fee, in the event of such payment being required to be made, by the notification issued by the State Government in the Official Gazette. Mr. Sharma points out that, even here, the provision does not envisage annual renewal of the approval granted under the Act.

18. In support of his submissions, Mr. Sharawat relies on

[10] **15. Mode of declaration**. – 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.

[11] **34. Renewal fees**. –
(1) if The State Government may, by notification in the Official Gazette, direct that for the retention of a name on the register after the 31st day of December of the year following the year in which the name is first entered on the register, there shall be paid annually to the State Council such renewal fee as may be prescribed, and where such direction has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates.

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(i) paras 21 and 22 of the judgment of a Division Bench of this Court in ***Rajdhani Public School v. C.B.S.E.***[12],

(ii) paras 86 and 87 of the judgment of the learned Single Judge of the High Court of Madras in ***Dr T. Arulselvam v. Government of Tamil Nadu***[13], and

(iii) paras 1, 6, 7, 12 and 14 to 16 of the judgment of another learned Single Judge of the High Court of Madras in ***Asan Memorial Association v. State of Tamil Nadu***[14].

19. Imposition of the requirement of obtaining yearly approval, by an already approved institution, submits Mr. Sharawat, would amount to placing a limitation or restriction on the institution's statutory right of recognition. He refers, in this context, to

(i) paras 34 to 36 of the judgment of a learned Single Judge of the High Court of Himachal Pradesh in ***Himachal Pradesh B. Ed. Colleges Association v. State of Himachal Pradesh***[15],

(ii) paras 5, 6 and 12 of the judgment of a learned Single Judge of the High Court of Kerala in ***The Muslim Educational Society v. State of Kerala***[16],

(iii) ***Sarathi Institute of Veterinary and Animal Science v. State of Kerala***[17], also by a learned Single Judge of the High Court of Kerala,

(iv) para 4 of the judgment of the Division Bench of the High Court of Kerala in the statutory appeal preferred against the judgment at (iii)

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[12] **MANU/DE/8329/2006**
[13] **2012 (2) CTC 772**
[14] **2009 (6) CTC 579**
[15] **2012 SCC OnLine HP 6552**
[16] **(2010) 3 KLT 357**
[17] **2017 SCC OnLine Ker 9045**

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supra, reported as ***Kerala Veterinary and Animal Science University v. Sarathi Institute of Veterinary and Animal Science***[18] and

(v) the judgment of the High Court of Allahabad in ***Yashraj College of Professional Studies v. State of U.P.***[19]

20. Specific Regulations, in respect of the B. Pharm, M. Pharm and D. Pharm programs conducted by the PCI were framed on 10 December 2014, in exercise of the powers conferred by Sections 10 and 18 of the Act, and Mr. Sharawat points out that, while the M. Pharm Course Regulations, 2014[20] specifically envisaged, in Regulation 4(d) and (e)[21], periodic renewal of the approval originally granted, at the expiry of every 5 years, no such renewal of approval was envisaged by the B. Pharm Course Regulations, 2014[22] or the D. Pharm Course Regulations, 2014[23]. Thus, submits Mr. Sharawat, the PCI, too, in the Regulations framed by it, envisaged renewal of approval only in the case of the M. Pharm course, and not for the B. Pharm or the D. Pharm courses.

21. Though, in his submission, the Act is self-speaking, the PCI framed the schemes for consideration of the claims for grant of approval under Section 12 of the Act, and the substantive provisions of the Schemes, too, do not contemplate any requirement of annual renewal of approval. For example, the Scheme framed for the B

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[18] **(2017) 4 KLT 349**
[19] **ILR (2020) 8 All 175**
[20] Hereinafter the "M Pharm Regulations"
[21] (d) The approval to a Post Graduate Course shall be granted initially for a specified period not exceeding 5 years, after which it shall have to be renewed.
(e) The procedure for 'Renewal' of approval shall be saved as applicable for the grant of approval.
[22] Hereinafter the "B Pharm Regulations"
[23] Hereinafter the "D Pharm Regulations"

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Pharm course, titled "Scheme framed under regulation 9 of the Bachelor of Pharmacy (B. Pharm) Course Regulations, 2014" had, as its Preambular recital, "Under this Scheme, the application for consideration of approval u/s 12 of the Pharmacy Act, 1948 shall be submitted by an authority to the Pharmacy Council of India on Council's portal only", making no reference to continuation of approval. Even in Clause 5 of the Scheme, it refers only to "existing institutions applying for a new course", without any reference to existing institutions applying for renewal. The only reference to annual renewal, if at all, could be said to be found in Annexure IV to the Scheme, which set out the PERC. Clause 4 of the Scheme stated that the details of online payment of PERC were enclosed in Annexure IV. S. No. 3 in the table contained in Annexure IV referred to "Annual PERC". This was the only point, the entire Scheme, in which there was a reference to "annual". Mr Sharawat further submits that, if PERC were to be charged annually, it would become financially unviable for the institutions, as the PERC, for 2 courses, for one year, was ₹ 6 lakhs, apart from GST. Even otherwise, submits Mr. Sharawat, the mere use of the word "annual" in the table in Annexure IV to the Scheme could not be treated as entitling the PCI to charge annual PERC or insist on all existing institutions annually renewing the approval granted to them under Section 12(1) of the Act, where no provision in the Act required them to do so. The power to charge annual PERC, he submits, was required to be contained in the parent statute, and could not be derived from a recital in a table contained in the Annexure to the Scheme framed in terms of the

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Regulations which, in turn, owe their existence to the Act. In support of his submissions, Mr. Sharawat relies on

(i) paras 7 and 8 of ***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla***[24],

(ii) paras 16 to 19 and 21 of ***Tata Iron and Steel Co Ltd v. State of Bihar***[25],

(iii) para 20, 24 and 27 to 30 of ***Gupta Modern Breweries v. State of J & K***[26],

(iv) para 7 of ***Narinder Chand Hem Raj v. Lt Governor***[27],

(v) para 13 of ***Bimal Chandra Banerjee v. State of M.P.***[28],

(vi) para 20, 22, 23, 27, 30, 32 and 39 of ***Hindustan Times v. State of U.P.***[29] and

(vii) para 9 of ***State of Kerala v. P.J. Joseph***[30],

all rendered by the Supreme Court of India.

Submissions of Mr. Vinay Garg, learned Senior Counsel, on behalf of the PCI

22. Responding to Mr. Sharawat's submissions, Mr. Garg, learned Senior Counsel for the PCI advanced a preliminary objection to the territorial jurisdiction of this Court to entertain the present writ petition, as the petitioner institutions are situated outside the reach of its jurisdiction. Even otherwise, he submits that, applying the

[24] **(1992) 3 SCC 285**
[25] **(2018) 12 SCC 107**
[26] **(2007) 6 SCC 317**
[27] **(1971) 2 SCC 747**
[28] **(1970) 2 SCC 467**
[29] **(2003) 1 SCC 591**
[30] **AIR 1958 SC 296**

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principle of *forum conveniens*, the petitioner sought to be relegated to the High Court which has dominion over its *situs* and location.

23. On merits, Mr. Garg relies on clauses (b) and (d) of Section 10(2) of the Act, which empowers the PCI to frame Education Regulations, prescribing the equipment and facilities to be provided for students undergoing approved courses of study and "any other conditions of admission to examinations". He also places reliance on Section 12(3) and the omnibus power to make regulations conferred on the PCI by Section 18(1)[31] of the Act. Mr. Garg also refers the Court to Regulation 9 of the B. Pharm. Regulations, which is titled "Approval of the authority conducting the course of study" and proceeds to state that "no person, institution, society, trust or university shall start and conduct B. Pharm. programme without the prior approval of the Pharmacy Council of India". He emphasises the words "and conduct", to submit that the jurisdiction and authority of the PCI extends not only to grant of approval to start the course, but also to continued approval during conducting of the course, which would include the power to grant yearly approvals. The practice of granting yearly approvals, submits Mr. Garg, has been continuing since long. He points out that the petitioner was also granted approval only for conducting the B. Pharm. and D. Pharm. courses for the year 2023-2024, and has not chosen to challenge the grant of approval in the said terms.

[31] **18. Power to make regulations**. –
(1) The Central Council may, with the approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act to carry out the purposes of this chapter.

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24. Mr. Garg relies on the "Statement of Objects and Reasons" of the Act, which empowers the PCI to "prescribe the minimum standards of education and approve courses of study and examinations" for Pharmacists. He further submits that the PCI is manned by persons of authority and competence, and underscores the constitution and composition of the PCI, as set out in Section 3[32] of the Act. He also points out that Section 10(2)(c) empowers the PCI to, by Education Regulations, prescribe "the subjects of examination and standards therein to be attained". The requirement of a yearly approval being taken by the institutions running Pharmacy courses, submits Mr. Garg, is only to ensure the maintenance of adequate standards of education by the IGNOU.

25. Mr. Garg seeks to contest the manner in which Mr. Sharawat interprets Section 12(1). According to Mr. Garg, the expression "course of study", as employed in the said sub-section would refer to each year of the Bachelors or Masters degree programme conducted

[32] **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:

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by the institution. The entire B. Pharm., or D. Pharm. course cannot, according to Mr. Garg, be treated as a "course of study". He further submits that Section 12(1) uses both the expressions "course" and "course of study" and it would be contrary to the settled principles of interpretation of statutes to accord, to both expressions, the same understanding. In his submission, the duration of the "course" is four years, whereas each year constitutes an independent "course of study". To support the submission, he relies on the fact that Section 12(1) itself contemplates a declaration by the PCI that the course of study provided by the institution is an approved course of study "for the purpose of admission to an approved examination for pharmacists". The examination, he submits, does not merely take place at the end of four years of the course, but takes place at the end of every year. Each year, therefore, is a separate "course of study", according to Mr. Garg. This interpretation, according to him, is also supported by Section 12(3) of the Act. It is worthwhile, in this context, to reproduce the averments in this regard, as contained in the written submissions filed by PCI:

> "For getting approval under section 12 of Pharmacy Act, 1948 any authority in State (meaning thereby any Institution, Society, Trust etc.) may have to apply for conducting the course of study (meaning thereby D. Pharma, B. Pharma, M. Pharma and Pharm D courses) for pharmacist with Pharmacy Council for approval of the said course of study. The Pharmacy Council of India, when satisfied after inspection of the existing facilities as required under regulations, may approve the Institutions for conducting said course of study for purpose of admission and examination through approved Examination body. *The power under Section 12(1) of the Pharmacy Act talks about the approval of the course of study but the phrase 'Course of study' is not defined under the Act. The course of study mentioned in Section 12 means and includes 'course of study' for 1st year; 'course of study' for 2nd year; course of study for 3rd year and finally course of study for 4th year of B Pharma course and Course of study for 1st year; course of study*

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for 2nd year of D Pharm course each year would be followed by exam after teaching different subjects and topics along with different practical trainings. Hence, the section 12(1) itself contain power of year wise approval even without the aid of other provisions.

Of the perusal of section 12(1) read with Section 12(2) & (3) along with regulation 9 of B. Pharm courses of regulation 2014, It is crystal clear that the Pharmacy institutions conducting pharmacy Courses has to submit a scheme year wise in the prescribed format forgetting approval under Section 12(1) of Pharmacy Act, 1948 from Pharmacy Council of India as the course of study has to be followed by examination.

The scheme is required to be submitted annually as per the decision of Pharmacy Council of India under Section 12 of Pharmacy Act since its inception only to regulate the Pharmacy Education at the annual approval of the course of study of Pharmacy Institutions so as to enable the Pharmacy Council to keep a proper check on the institution regarding running of the courses as to whether they are in conformity with the education regulation and as per section 12 of the Pharmacy Act, *otherwise it would be very difficult to regulate it*. In other words, *the word approval in Section 12 of Pharmacy Act 1948 is approval for the course of study of annual so if the approval of the examination of each year. It enables the Pharmacy Council of India to keep itself on guard with regard to performance of the institution so that the approval is extended on year-to-year basis and to easily intervene on any difficulty in running the institutions and every year the institution has to start a new course of study for the academic year which require prior approval otherwise the institution cannot able to run the new course as prior approval from Pharmacy Council is essentially required before opening of new 'course of study' as per mandate of Section 12 of Pharmacy Act and Regulations made thereunder*."

(Emphasis supplied)

26. Mr. Garg also cites Regulation 3[33] of the B. Pharm. Regulations to support his interpretation. He also refers to Regulation 4(B) which stipulates, as the minimum qualification for admission to the second

[33] 3. Duration of the course. –
B. Pharm.: The duration of the course shall be for the academic years (annual/semester) full-time with each academic year spread over a period of not less than 200 working days for annual pattern and hundred working days for each semester.

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year/third semester B. Pharm. programme by way of lateral entry, "a pass in D. Pharm course from an institution approved by the Pharmacy Council of India under section 12 of the Pharmacy Act". In that view of the matter, he submits that there is nothing incongruous or absurd in the PCI requiring fresh approval to be obtained by the institution, which has already been granted approval for the first year of the new course being undertaken by it. When lateral entry is permissible at the level of the second year, he submits that there is every likelihood of the numerical strength of the students being taught in the second year being different from that in the first, which would require a fresh assessment by the PCI regarding the capability of the institution to run the course.

27. Mr. Garg further submits that no serious prejudice results to the petitioner as a consequence of the impugned decision to require the petitioner to obtain approval yearly. He submits that, in order to do so, the petitioner has only to submit the SIF application for renewal of approval online. Thereafter, it is for the PCI to verify the petitioner's competence to continue to run the course and, in the event of any deficiency, the petitioner would be put to notice. For this purpose, Mr. Garg relies on paras 24 and 25 of the judgment of the Supreme Court in ***Priyadarshini Dental College & Hospital v. U.O.I.***[34]

28. Mr. Garg further relies on Regulation 9 of the B. Pharm. Regulations. He reiterates his submission that the words "and conduct", as employed in Regulation 9(1) are by themselves sufficient

[34] **(2011) 4 SCC 623**

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to empower the PCI to require the institution to obtain yearly approvals to conduct their courses. Besides, he also draws attention to Regulation 9(2)[35], which requires every person, or Pharmacy College, which seeks to obtain permission under Section 12(1) of the Act, to "submit a scheme as may be prescribed by" the PCI. The scheme in question, as is contained in Appendix A to the B. Pharm. Regulations, he points out, requires, among the conditions to be fulfilled by the institution, the stipulated workload of the faculty employed, which envisages Professors/Associate Professors working for 8 hours a week, Assistant Professors working for 12 hours a week and Lecturers working for 16 hours a week. These are all, therefore, he submits, attributable to yearly renewals, and the data has to be provided by the institution on year to year basis. The insistence, by the PCI, on the institution obtaining yearly/annual renewal of approval, therefore, according to him, is in sync with Section 12(3) of the Act read with Regulation 9 of the B. Pharm. Regulations [in the case of an institution running the B. Pharm. course]. The PCI is, therefore, according to Mr. Gupta, acting within jurisdiction in requiring the petitioner to furnish information regarding its institution and seek approval on a yearly basis. If the information is not provided, there would be no renewal of the approval granted to the institution. This, according to him, is essential to ensure enforcement of educational standards of the courses conducted by the IGNOU across the country, failing which it would be impossible, administratively, to maintain academic standards, which is one of the avowed objectives of the PCI,

[35] 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 the scheme as may be prescribed by the Pharmacy Council of India.

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even as per the "Statement of Objects and Reasons" of the Act. He refers me, in this context, to paras 10 and 11 of the counter-affidavit filed by the PCI, which read thus:

> "10. That it is evident that the PCI does not just 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 the appropriate qualifications to be registered as a pharmacist under sub- section (2) of Section 32.
>
> 11. In the academic session 2023-2024, about 5650 applications were received from institutions for granting annual approval. The PCI granted approval to about 5450 institutions for academic session 2023-2024 including existing institutions for renewal of approval. The answering Respondent produced list of increase in institutions by the time which is sufficient to show that the strict supervision is required for maintaining standard of education in the field of Pharmacy education."

In support of his submissions, Mr. Garg relies on paras 11 and 16 of ***Pavai Varam Educational Trust v. Pharmacy Council of India***[36] **.**

29. Mr. Garg submits that according, to Section 12 of the Act, of the literal interpretation, would defeat the purpose of the Act and affect and impact the discharge, by the PCI, of its functions and powers conferred by the Act. He submits that, over time, the principle that a statute is required to be interpreted purposively, rather than literally, has gained ground and cites, for this purpose,

(i) para 139 of the judgment of the Supreme Court in ***Newtech Promoters and Developers Pvt Ltd v. State of U.P.***[37] and

(ii) the judgment of the Supreme Court in ***Rattan Chand Hira Chand v. Askar Nawaz Jung***[38].

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[36] **(2020) 2 CWC 643: 2020 SCC OnLine Mad 2668**
[37] **(2021) 18 SCC 1**

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Mr. Gupta further relies, in this context, for the principle that a statute has to be read as a whole and that both text and context have to be borne in mind while interpreting a statutory provision, on

(i) para 5 of ***Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd***[39],

(ii) para 33 of ***R.B.I. v. Peerless General Finance & Investment Co. Ltd***[40],

(iii) paras 30 to 34 of ***X v. Principal Secretary***[41],

(iv) paras 134 to 137 of ***Vivek Narayan Sharma v. U.O.I.***[42] and

(v) para 10.1 of ***Hira Singh v. U.O.I.***[43],

all rendered by the Supreme Court.

30. Alternatively, submits Mr. Garg, the power to do an act includes the power to do all acts which are incidental and consequential thereto. Such incidental and consequential exercise of jurisdiction cannot be regarded as *ultra vires*, even if there is no express power conferred to do so. He cites, in this context, the judgments of the Supreme Court in

(i) ***Khargram Panchayat Samiti v. State of W.B.***[44],

(ii) ***Okara Electric Supply Co. Ltd v. State of Punjab***[45] paras 7, 14 and 16) and

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[38] **(1991) 3 SCC 67**
[39] **(1999) 6 SCC 82**
[40] **(1987) 1 SCC 424**
[41] **(2023) 9 SCC 433**
[42] **(2023) 3 SCC 1**
[43] **(2020) 20 SCC 272**
[44] **(1987) 3 SCC 82**
[45] **AIR 1960 SC 284**

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(iii) ***Diwan Sugar & General Mills (Private) Ltd v. U.O.I.***[46] (paras 3 to 6).

Mr. Garg also invokes the principle of *contemporanea expositio* and cites, for the purpose, paras 11, 14, 17 and 19 of the judgment of the Supreme Court in ***Rohitash Kumar v. Om Prakash Sharma***[47].

31. Apropos the authority to levy the PERC, Mr. Garg relies on Regulation 9(3)[48] of the B. Pharm. Regulations, which envisages that the scheme, to be submitted by the institution under Regulation 9(2), is required to be accompanied by "such fee as may be prescribed". It is this fee, submits Mr. Garg, which constitutes the PERC. The submission of Mr. Sharawat that collection of the PERC is with no statutory backing is, therefore, unsound. Mr. Garg submits that Mr. Sharawat is in error in analogizing the PERC with a tax. The PERC, he submits, is neither a tax not a compulsory exaction of money, but a regulatory and compensatory fee, charged in terms of the applicable Regulations. It partakes of a *quid pro quo* element. To support his submission that there is statutory foundation for collection of PERC by the PCI from institutions on annual basis, and to prescribe a fee for the said purpose, Mr. Garg once again refers to Regulation 9(3) of the B. Pharm. Regulations and cites, in this context, ***Vam Organic Chemicals Ltd v. State of U.P.*** [49]**.**

32. Finally, Mr. Gupta submits that submissions, similar to those raised by him in the present case, were urged by Mr. Sharawat himself

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[46] **AIR 1959 SC 626**
[47] **(2013) 11 SCC 451**
[48] 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:
[49] **(1997) 2 SCC 715**

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before a coordinate Single Bench of this Court in ***Associates of NCTE Approved Colleges Trust v. National Council for Teacher Education***[50], and rejected. He specifically cites paras 57, 60 to 62 and 65 of the said decision.

Submissions of Mr. Sharawat in rejoinder

33. Mr. Sharawat submits, in rejoinder, that the principle of *contemporanea expositio* has no application to the present case, as there is no contemporaneous evidence of the PCI understanding Section 12 in the manner in which Mr. Garg prays that the Regulation be understood. Nor, he submits, is there any evidence to support Mr. Garg's contention that the PCI has, since long, being granting yearly renewals of approvals granted to existing institutions.

34. Mr. Sharawat also disputes the interpretation that Mr. Gupta seeks to place on Section 12 of the Act. He submits that the words "course" and "course of study", in Section 12, refer to the same course. He further submits that Mr Garg's interpretation is contrary to paras 6, 7, 14 and 15 of the counter affidavit of the PCI, which refers to a particular year as an "academic session", as part of the "course of study", which is the entire course. As such, he submits that Mr. Garg's contention that every year of the B. Pharm. or D. Pharm. course is an independent "course of study" is contrary even to the stand taken by the PCI in its counter affidavit. He further submits that

[50] **283 (2021) DLT 64**

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this interpretation is also contrary to Regulation 2[51] of the B. Pharm. Regulations, which, too, regards the entire B. Pharm course as a "course of study".

35. Mr. Sharawat submits that the PCI cannot act outside the confines of the Act or the Regulations made thereunder. It does not possess any residuary power.

36. The invocation, by Mr. Garg, of the doctrine of implied powers is also, according to Mr. Sharawat, misplaced. The doctrine of implied powers can be invoked only where, if the implied power is not conceded to the party, it would be impossible for the party to exercise its accepted powers. Mr. Sharawat cites, for this purpose, paras 20 to 23 of the judgment of the Supreme Court in ***Bidi, Bidi Leaves and Tobacco Merchants' Association v. State of Bombay***[52]**.** In the case of the Act, Section 16(2)(c)[53] confers ample powers of inspection. Inspection under Section 16(2)(c) is obviously in aid of the approval granted to the institution to conduct the course, thereby obviating any occasion to resort to the doctrine of implied power. Had Section 16 not been present in the Act, submits Mr. Sharawat, there might have been substance in Mr. Garg's reliance on the said doctrine. The doctrine of implied power, submits Mr. Sharawat,

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[51] 2. B Pharm shall consist of a certificate, having passed the course of study and examinations as prescribed in these regulations, for the purpose of registration as a pharmacist to practice the profession under the Pharmacy Act, 1948.

[52] **AIR 1962 SC 486**

[53] (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.

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applies only where invocation of implied power is necessary for exercise of admitted power. No such necessity exists in the present case, in view of Sections 12(3) and 16(2)(a) of the Act. If the PCI is of the opinion that a particular institution requires to be monitored periodically, it is perfectly at liberty to do so, on a monthly or even a weekly basis, but by invoking the powers conferred by these provisions, and not by requiring all institutions, across the board, to obtain yearly renewals of the approval already granted to them.

37. Adverting to the decision in ***Khargram Panchayat***, which was invoked by Mr. Garg in the context of his argument predicated on the doctrine of implied power, Mr. Sharawat points out that , in the said decision, the Supreme Court has observed that "the conferment of the power to grant a license for the holding of a *hat* or fair under Section 117 of the Act includes the power to make incidental or consequential orders for specification of the day on which such hat or fair shall be held." He has then invited my attention to Section 117 of the West Bengal Panchayat Act, 1973, on which the Supreme Court has relied. It reads thus:

> "117. A Panchayat Samiti may require the owner of the lessee of a hat or market or owner or the lessee of land intending to establish a hat or market thereon, to obtain a license in this behalf from the Panchayat Samiti *on such terms and conditions as may be prescribed* and subject to the provisions of section 133, on payment of a fee for such license."

By using the expression "on such terms and conditions as may be prescribed", Mr. Sharawat submits that Section 117 of the West Bengal Panchayat Act conferred power on the Panchayat Samiti to make incidental or consequential orders. No such residual power is

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conferred on the PCI by Section 12 of the Act in the present case. Rather, Section 12 has been made subject only to the extant Regulations.

38. Mr. Sharawat submits that the PCI, in calling upon all existing approved institutions to apply every year for renewal/continuation of approval, fails to notice that, in resorting to such an illegal measure, the students studying in the institutions are the ultimate sufferers as, at the time when they obtain admission, they would be in a state of uncertainty as to whether the institution is going to continue to remain approved for the second year, the third year, or the fourth year of the course. No student, in fact, would desire to join an institution without even knowing whether it would continue to remain approved even beyond the first, or the second, year. Even for this reason, he submits that the interpretation of Section 12, adopted by Mr. Garg, is unacceptable.

39. Mr. Sharawat also submits that no yearly declarations notifying continuation of renewal of approval to existing institutions were published in the Official Gazette, as required by Section 15 of the Act, if continuation of approval was to be obtained on a yearly basis.

40. Mr. Sharawat submits that, while the concept of yearly approvals is not foreign to institutes of higher education, none of the concerned enactments require an institute, or a course provided by it, for which approval has already been granted, to be approved again and again every year. He contrasts the position which applies in the

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case of the petitioner, by virtue of the impugned communication, with, for example, the position which applies in the Medical Council of India/Dental Council of India (MCI/DCI). In the MCI, for example, he submits that, while the institution is required to take approval every year, it is only for fresh batches. A batch, for which approval has already been obtained, is not required to be again approved the succeeding year. As such, existing students do not suffer.

41. Even the M. Pharm Regulations, in Regulation 4(d)[54], points out Mr. Sharawat, envisages approval to a Post Graduate Course being granted initially for a period not exceeding five years, after which it has to be renewed. Thus, renewal, even in the case of the M. Pharm course, is required to be again taken only after five years, once the span of one course is over, and not yearly.

42. Mr. Sharawat further submits that there is no rational justification for the decision to require institutions, who have already secured approval under Section 12(1) for the course of study provided by them, to again apply for renewal of the approval every year. The facilities which the institution is required to have in place are for the entire duration of the course, and do not vary year to year. The norms prescribed in the Regulations, applicable to the particular course, are also for the entire course, and not for one year of the course. As such, the submission of Mr. Garg, that one year of the course should be treated as the "course of study", is, he submits, completely divorced from reality.

[54] (d) The approval to a Post Graduate Course shall be granted initially for a specified period not exceeding 5 years, after which it shall have to be renewed.

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43. Mr. Sharawat distinguishes the decision in ***Priyadarshini Dental College & Hospital*** by referring to sub-Regulation (4) of Regulation 10 and sub-Regulation (1) and the proviso to Regulation 11 of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006, which were in issue in that case, and which stands reproduced in para 18 of the report.

44. Insofar as charging of PERC is concerned, Mr. Sharawat has referred me to Regulation 9(3) of the B. Pharm Regulations, which requires the scheme, submitted by the institution for approval under Section 12 of the Act, to be accompanied with "such a fee as may be prescribed". The "prescription" regarding the PERC to be paid is required to be contained in Rules, made under Section 46 of the Act. There is no such prescription. Neither, for that matter, do the B. Pharm Regulations, or the D. Pharm Regulations, prescribe any PERC to be paid for the purpose of annual renewal of approval granted under Section 12(1) of the Act. Mr. Sharma invokes, in this context, Section 20[55] of the General Clauses Act, 1897, and cites paras 8 and 9 of the judgment of a Division Bench of the High Court of Madras in ***Commissioner of Wealth Tax v. Vasantha***[56].

[55] **20. Construction of notifications, etc., issued under enactments**. – Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

[56] **(1973) 87 ITR 17**

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Analysis

I. Re: Interpretation of Section 12 of the Act

45. The controversy is, in my opinion, resolved by referring to Section 12 of the Act, even by itself, supported by the Education Regulations. Section 12 is clear and categorical. It refers to "course of study" conducted by the Authority – meaning the institution. The submission of Mr. Garg that the words "course of study" and "course" are to be given two different interpretations is opposed to plain English grammar. The opening words of Section 12(1) read "Any Authority in a State which conducts *a course of study* for pharmacists may apply to the Central Council for approval *of the course* …". No intricate grammatical analysis is needed to understand that the word "course" refers to the "course of study" and to no other course. The use of the specific article "the", before "course", obviously alludes to the course of study to which the clause earlier refers. The words "course of study" and "course" in Section 12(1), therefore, mean one and the same thing.

46. Once this is understood, nothing really survives for consideration, and the decision of the PCI to require institutions, who already possess approvals under Section 12(1) for the course(s) of study conducted by them, to apply on an yearly basis for continuation of the approvals, is obviously illegal. Section 12(1) requires the institution which conducts the course of study to apply to the PCI for approval of that course of study. If the PCI is satisfied that the course

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of study is in conformity with the Regulations, it shall declare the course of study to be an approved course of study for the purpose of admission to an approved examination for Pharmacists. Thus, Section 12(1) refers, at all points, to the "course of study" conducted by the institution. The approval is therefore to the course of study, whether one refers to it as a "course" or as a "course of study". In other words, in the case of the petitioner, the approval granted to the petitioner was to its B. Pharm and D. Pharm courses.

47. Mr. Garg's submission that the "course" refers to each individual year of the B. Pharm/D. Pharm courses is opposed not only to Section 12(1) but also to the Regulations and to the stand taken by the defendants itself in its written submissions. In the written submissions extracted in para 25 (*supra*), the PCI has, in the opening sentence of the following paragraph, effectively conceded the point:

> "For getting approval under section 12 of Pharmacy Act, 1948 any authority in State (meaning thereby any Institution, i.e., Trust etc.) they had to apply *for conducting the course of study* (meaning thereby D. Pharma, B. Pharma, M. Pharma and Pharm D courses) for pharmacists with Pharmacy Council for approval *of the said course of study*. The Pharmacy Council of India, when satisfied after inspection of the existing facilities as required under regulations, may approved the Institutions for conducting *the said course of study* for purpose of admission and examination through approved Examination body."
>
> (Emphasis supplied)

In the afore-extracted opening sentences in the written submissions tendered by the PCI, it is acknowledged that the course of study is not one particular year of the course but the entire B. Pharm /M. Pharm/D. Pharm course. This completely defeats the assertion, which follows in

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the same paragraph, that each year of the B. Pharm/M. Pharm/D. Pharm course is an independent course of study.

48. Regulation 2 of the B. Pharm Regulations – which is *pari materia* to the corresponding provisions in the M. Pharm and D. Pharm Regulations – also clarifies the point, as it refers to B. Pharm/M. Pharm/D. Pharm as consisting of a certificate of having passed the course of study and the examinations as prescribed in the Regulations. B. Pharm /M. Pharm / D. Pharm certificates, needless to say, are issued only after the student completes and clears the entire B. Pharm/M. Pharm/D. Pharm course. As such, the "course of study" is the entire B. Pharm/M. Pharm/D. Pharm course and not any particular year thereof.

49. Accepting the interpretation of Section 12(1) of the Act, as suggested by Mr. Garg, would result in curious and incongruous consequences. A student who may join the B. Pharm course conducted by the petitioner would be joining one course consisting of four courses of study, as each year of the B. Pharm course would be a separate course of study. It can obviously not be said that a student who joins B. Pharm course joins four courses of study or that on his clearing the said course and obtaining a B. Pharm certificate, has cleared four courses of study. This would also be in the teeth of Regulation 2 of the B. Pharm Regulations.

50. On a plain reading of Section 12(1) alongwith the Regulations, therefore, it has to be held that the approval that is granted under the

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said provision is to the entire B. Pharm/M. Pharm/D. Pharm course and not to any one year of the said course. Plainly, therefore, there can be no question of the institution having to apply at the end of any one year for renewal of approval for the next year, as the approval stands granted for the entire course.

51. Mr. Garg cited the judgment of the High Court of Madras in ***Pavai Varam Educational Trust***. Para 16 of the said decision reads thus:

> "16. The word "*approval*" in Section 12 of the 1948 Act also needs to be clarified that the approval for the course of study is annual and so is the approval of the examinations each year. This provision, therefore, enables the Council to keep itself on guard with regard to the performance of the institution so that the approval is extended on year to year basis, and to intervene if any institution defaults in running the institution according to the norms prescribed. The learned Single Judge, therefore, was right in construing the word "*approval*" to be a final approval only after completion of four years, which obviously in the present context is about the establishment of a new institution."

Though, in the afore-extracted passage from ***Pavai Varam Educational Trust***, there is a "clarification" that the approval of the course of study, under Section 12 of the Act, is annual, there is, in the said judgment, no basis forthcoming for this observation. The High Court has not examined the issue of whether the approval is annual, or not, by interpreting Section 12 independently, or in juxtaposition with Regulation 2 of the Education Regulations. The opening observation in para 16 of ***Pavai Varam Educational Trust*** cannot, therefore, with great respect, be regarded as an authority for the legal proposition that an approved institution is required to obtain continuation of the approval every year.

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52. The decisions cited by Mr. Garg cannot, therefore, advance his case.

II. Re. Consequence of failure to obtain renewal of approval

53. Mr. Garg advanced a further submission, which is equally unacceptable, i.e. if the petitioner were not to apply at the end of every year for continuation of the approval granted for the next year, the petitioner would not be treated as an approved institution any further. This submission only begs the question, and is directly in the teeth of the Act and, in fact, clearly demonstrates the error of the understanding, by the PCI, of Section 12(1). Withdrawal of granted approval is an independent and self-contained dispensation, governed by Section 13 of the Act. It is only in the circumstances envisaged by Section 13 that approval granted by the PCI to a course of study conducted by institution can be withdrawn. In this context, the judgments in ***Taylor v. Taylor***[57], ***Nazeer Ahmed v. King Emperor***[58] and a whole litany of decisions of the Supreme Court which have followed these authorities, including ***State of U.P. v. Singhara Singh***[59], are apt and rightly cited by Mr. Sharawat. They hold, in unequivocal terms, that where a statute requires a particular act to be done in a particular manner, that act must be done in that manner or not done at all, all other methods of doing the act being necessarily forbidden. Section 13 of the Act constitutes a self-contained code,

[57] **(1875) 1 Ch D 426**
[58] **AIR 1936 PC 253**
[59] **AIR 1964 SC 358**

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setting out the only circumstances in which the approval granted under Section 12(1) can be withdrawn. Absent the circumstances in Section 13, therefore, approval once granted under Section 12(1), continues unhindered. Accepting Mr. Garg's contention would amount to creating another circumstance in which approval granted under Section 12(1) would come to an end, outside the contemplation of the Act. Such a circumstance can neither be created by the Court nor by the PCI, far less by an executive decision such as the impugned communication dated 14 December 2023. The PCI cannot, by an executive decision, discontinue the approval of the B. Pharm or D. Pharm courses conducted by the petitioner, on the ground that the petitioner had not applied for continuation of approval at the end of one year, or, for that matter, at the end of any year. Once granted, the approval continues till it is withdrawn in accordance with Section 13 of the Act.

III. Re. plea of purposive interpretation

54. Mr. Garg sought to contend that, if Section 12 is accorded its plain meaning, it would result in a situation in which it would be very difficult for the PCI to monitor every institution providing Pharmacy courses to examine whether it continues to subscribe to the norms, guidelines and standards, which it is required to maintain.

55. No empirical data to support this submission has been provided either in the counter-affidavit, or during oral arguments, or in the written submissions tendered by the PCI. The submission is, therefore,

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advanced *in vacuo*, as it were, and cannot be accepted even for this reason.

56. That apart, even if it were to be assumed, for the sake of argument, that calling upon the institution to obtain yearly continuation of the approval granted to it under Section 12(1) would facilitate monitoring of its standards and performance by the PCI, that cannot justify recourse, by the PCI, to a procedure not only unknown, but contrary, to the law.

57. This is not a case in which the executive instructions supplement the statutory provisions. It is a well settled principle that, if the applicable statutory provisions are silent on any particular point, the gap may be filled in by executive instructions. The executive instructions may, therefore, supplement the statutory provisions; they cannot, however, supplant them. Where the statutory provisions direct one way, executive instructions cannot direct contrariwise. Where, therefore, Section 12(1) envisages approval being granted to an entire course, or course of study, the PCI cannot, by an administrative circular, limit the approval to a single year of the course. In doing so, the impugned communication does not fill in any gap or lacuna contained in the Act or in the Education Regulations, but creates a dispensation which is inimical and opposed thereto.

58. It is not as though the Act does not contain any provision whereby an institution, which has been granted approval under Section 12(1), can be monitored. Section 12(3) requires the institution

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to furnish such information as the PCI may, from time to time, require. The power conferred by this sub-section is unbridled and absolute. The PCI may, if it so chooses in a particular case, even call upon an institution to provide data regarding its functioning on a monthly basis. Of course, if this exercise is tainted by malice in law or employed as a mode of harassment, the Institution would be within its rights to challenge it.

59. Apart from Section 12(3), Section 16 of the Act empowers the PCI to inspect any institution providing an approved course of study. The Inspector who inspects the institution submits a report to the Executive Committee of the PCI. Every such report is forwarded by the Executive Committee to the institution and the report, along with the comments of the institution, if any, are forwarded to the Government of the State in which the institution is situated, and the Central Government. Clearly, therefore, the Act contains adequate safeguards by which the progress of an institution, which has been granted approval under Section 12(1), and the maintenance of standards in the Institution, can be monitored.

60. In fact, this position is not disputed even by the PCI. The PCI's stand is that it would greatly facilitate monitoring of approved institutions if they are asked to apply for continuation of the granted approval on a yearly basis, and that, in the absence thereof, it is extremely difficult to monitor their progress. The said difficulty, even if it exists, cannot be a justification for the PCI fashioning, by way of

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an administrative circular, a method to monitor approved institutions, which is opposed to the Act.

61. Thus, the principle of purposive interpretation as invoked by the PCI, has really no application to the facts at hand. The purpose on the basis of which the purpose of purposive interpretation has been invoked is monitoring of the progress of the Institution. For that purpose, sufficient provisions are contained in the Act in the form of Section 12(3) and Section 16. In the event of an institution failing to maintain requisite standards, its approval can also be withdrawn under Section 13. Adequate and sufficient provisions, to subserve the purpose for which the PCI has resorted to the practice of seeking yearly continuation of approvals already finding place in the Act, the practice cannot be sought to be sustained on the principle of purposive interpretation.

62. The reliance, by Mr. Garg, on the doctrine of purposive interpretation is, therefore, misguided.

63. In this context, the judgments of the Division Bench of this Court in ***Rajdhani Public School*** and of the Division Bench of the High Court of Kerala in ***Kerala Veterinary and Animal Science University*** clearly support the petitioner's case. In the said decisions, it has been held that, in the absence of any provision, permitting affiliation to be granted to an educational institution on an annual basis, the affiliation has to be in perpetuity, and can be withdrawn only by following the procedure envisaged in that regard. In the

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present case, the position is fortified by the express wording of Section 12(1), which envisages approval being granted to the course of study conducted by the institution. The approval has therefore to be to the course of study *per se* and there can be no question of approval being restricted to one year.

IV. Re. Failure of the petitioner to challenge the communication dated 29 November 2023

64. Mr. Garg also advanced the contention that the approval granted to the petitioner by the communication dated 29 November 2023 was for a single year i.e. 2023-2024, and sought to point out that the petitioner has not challenged the said communication. There is no doubt that the petitioner could have challenged the said communication, to the extent it restricted the approval granted to the petitioner to the year 2023-2024. That failure, however, cannot, in the facts of the present case seriously impact the petitioner, as the petitioner has, by the present petition, instituted less than a month and a half thereafter, challenged the subsequent Circular dated 14 December 2023, whereby institutions which had already been granted approval under Section 12(1) for the courses conducted by them were asked to apply for continuation of approval. Once that challenge has been launched shortly after the issuance of approval to the petitioner on 29 November 2023, it would be too hyper-technical to non-suit the petitioner merely on the ground that there was no separate challenge to the approval dated 29 November 2023 itself, on the ground that it was restricted to one year.

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65. Besides, the petitioner had applied on 3 July 2022 for approval of the B. Pharm and D. Pharm courses starting 2022-2023. The approval was sought, therefore, not for one particular year, but for a course which was *starting* in 2022-2023 (as was pre-printed on the SIF form itself). Owing to the delay on the part of the PCI, the approval could not be granted to the course starting 2022-2023 and was granted only from 2023-2024. Inasmuch as the petitioner had not sought approval for one particular year, the PCI was clearly in error in restricting the approval as granted by letter dated 29 November 2023 to the year 2023-2024.

66. That apart, as this judgment clearly holds that the PCI has no jurisdiction to restrict the approval granted by it for one year, if the petitioner institution was found satisfying the requisite criteria, the approval had to be for the course and not for one year of the course. That approval, once granted, could only be withdrawn in the manner known to the Act, as already held *supra*.

67. In these circumstances, the petitioner cannot be non-suited on the ground that it had failed to separately challenge the letter of approval dated 29 November 2023 on the ground that it was restricted to the year 2023-2024. The approval has, therefore, to be read as applying from the 2023-2024 onwards.

V. Re. doctrine of implied power

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68. Mr. Garg also sought to invoke the doctrine of implied power. He sought to contend that even if Section 12 did not expressly authorise the PCI to require approved Institutions to obtain continuation of the granted approval on a yearly basis, the right of the PCI to do so was sustainable by applying the doctrine of implied power. According to this doctrine, if a statute confers a particular power on a particular authority, that authority would also be empowered to do all such acts *which are necessary* in order to enable it to exercise the power expressly conferred.

69. The doctrine of implied power cannot justifiably be invoked by the PCI, in the present case, either in law or on facts.

70. In law, the invocation of the doctrine of implied power applies only where such implied power has to be conferred on the authority so as to enable it to discharge the power which is expressly conferred. It applies therefore only where it is impossible for the Authority to discharge the power, which is expressly conferred, unless the implied power is also conferred on the Authority. The principle of necessity has therefore to apply.

71. The law in this regard is settled by a catena of authorities. Para 20 of ***Bidi, Bidi Leaves and Tobacco Merchants Association*** holds thus:

> "20. One of the first principles of law with regard to the effect of an enabling act", observes Craies[60], "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything *which is indispensable* for the purpose

[60] Craies on Statute Law

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of carrying out the purposes in view". The principle on which this doctrine is based is contained in the legal maxim "*Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa ease non potest*". This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself *would be of no effect*". Dealing with this doctrine Pollock, C.B., observed in ***Michael Fenton and James Fraser v. John Stephen Hampton***[61] "it becomes therefore all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus: Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and *it is found impossible to do that thing* unless something else not authorised in express terms be also done, then that something will be supplied by necessary intendment". This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means, *as are essentially necessary to its execution*". In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that *the duty cannot be discharged or the power cannot be exercised at all* unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power *the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied.* This position in regard to the scope and effect of the doctrine of implied powers is not seriously in dispute before us. The parties are at issue, however, on the question as to whether the doctrine of implied powers can help to validate the impugned clauses in the notification."

(Emphasis supplied)

Craies postulates the principle thus:

"Thus in ***Cookson v. Lee***[62], a private Act vested certain lands in trustees for the purpose of enabling them to sell the lands for building purposes, but the Act contained no express power to expend any portion of the purchase moneys in setting out the roads or in making roads. In these circumstances the court held that, having regard to the object of the Act, namely the sale of the property as building land-such power ought to be implied. `In point

[61] **(1857-1859) 117 R.R. 32 at p. 41 : II Moo. PC. 347**
[62] **(1853) 23 LJ Ch. 473**

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> of fact' said the court `the Act of Parliament did not contain that which Acts of Parliament of a similar nature generally do contain, namely, power to apply a portion of the purchase money in the making of roads and giving facilities for putting the property in a state in which it is capable of being sold and immediately used for building purposes. It did not do that expressly.....We must take it (the Act) as we find it and one very natural question is whether, if it does not in terms do so, it does not do it by implication-whether we must not infer from the powers given, the Legislature considered that they had given the power which is contended for, or whether directing something to be done, they must not be considered by necessary implication to have empowered that to be done *which was necessary in order to accomplish the ultimate object*."
>
> (Emphasis supplied)

72. It has not been pleaded by the PCI that it is impossible for it to monitor the progress of the approved institutions unless it is also conferred the power of requiring the institutions to obtain yearly approvals. All that is pleaded is that it is difficult to do so. This plea is also not supported by any empirical data. Difficulty cannot constitute a basis to invoke the doctrine of implied power. Impossibility of performance, established by cogent and empirical evidence, is the *sine qua non*.

73. As already noted, the Act provides, in Section 16 as well as in Section 12(3), sufficient and adequate methods, by which the PCI can monitor the continued status and progress of the approved Institutions. No case of impossibility to do so, despite the provisions contained in Section 16 and Section 12(3), has either been pleaded or demonstrated by the PCI. In the absence of any impossibility being found to exist, the doctrine of implied power cannot be invoked.

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74. Even otherwise, the doctrine of implied power cannot be invoked to permit the performing of an act which is contrary to the statute. There can be no implied power to commit an illegality. Where the statute envisages that approval has to be granted for a course of study, and not for one year of the course of study, and does not contain any provision which requires yearly continuation of approvals to be sought, or even granted, the PCI cannot be permitted to call on approved institutions to obtain continuation of approval every year, by invoking the doctrine of implied power. Allowing this would amount to permitting the doctrine of implied power to be invoked for performing of an act which is prohibited in law.

75. The judgments cited by Mr. Garg, in this context, are clearly distinguishable.

76. The decision in ***Khargram Panchayat Samiti*** is also clearly distinguishable. The ***Khargram Panchayat Samiti*** was empowered, in that case, to grant a licence for holding of a *hat* or fair. *Significantly, the statute also conferred, on the Samiti, a power of general administration of the fair*. The issue before the Supreme Court was whether, in the absence of a specific power conferred in that regard, the Samiti could direct that the fair be held only on particular days. It was in the above background that the Supreme Court answered the issue in the affirmative, holding that the Samiti was empowered to fix days for holding of the fair as well. The conferment of "incidental" powers on the Samiti, by the Supreme Court, was in this context. Thus, the controversy before the Supreme

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was not only different from that in the present case; it also arose in a distinctly different factual and legal background.

77. ***Okara Electric Supply Co.*** was rendered, as is noticed in para 14 of the decision, "having regard to the special features of the business" under consideration. The statutory provision in that case empowered the power of the Punjab State Electricity Board[63] to pass directions with respect to the manner in which electricity was to be used after the period of sanction was over. The Supreme Court observed that the issue had to be examined from a practical point of view, and that, *as it was impossible to remove the constructions put in place for supplying energy during the period of sanction*, the PSEB was well within its rights in providing for the manner in which they were to be dealt with, once the period of sanction was over. Again, the question before the Supreme Court, and the circumstances in which it fell for consideration, were clearly distinguishable.

78. One is profitably reminded, in this context, of the law, now trite, that a judgment of the Supreme Court has to be understood not like a theorem of Euclid, but keeping in mind the factual and legal situation in which it was rendered.[64]

VI. <u>The sequitur</u>

79. The above observations and findings in fact conclude the issue in controversy. It is clear, beyond any manner of doubt, that the PCI

[63] PSEB
[64] Refer **Haryana Financial Corpn Ltd v. Jagdamba Oil Mills, (2002) 3 SCC 496**

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could not have called upon institutions conducting courses of study which already stand approved under Section 12(1) to obtain continuation of approval every year. Even on these findings, therefore, the writ petition deserves to be allowed.

VII. Other incidental submissions

80. I would be failing in my duty if I do not advert to the other issues, which were raised, albeit briefly.

VIII. Re. Section 15

81. Mr. Sharawat also relied on Section 15 of the Act, in support of his contention that the approval granted under Section 12 was intended to apply in perpetuity during conducting of the course of study for which the approval was granted, subject only to the PCI's right to withdraw the approval in terms of Section 13.

82. I am inclined to agree with him.

83. Section 15 states that all declarations under Sections 12, 13 and 14 are to be made by a Resolution passed at the meeting of the Central Council of the PCI and are required to be published in the Official Gazette. Publication in the Official Gazette is itself an indicator that the approval that is granted to the course of study as a whole and not to every year of the course of study. Section 15 cannot be read as envisaging a yearly publication in the Official Gazette, of the approval

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of the course of study conducted by the Institution. The "declaration" to which Section 15 alludes harks back to Section 12(1). Section 12(1) envisages the Central Council of the PCI declaring the course of study conducted by the Institution to be an approved course of study for the purpose of admission to an approved examination for Pharmacists. It is this declaration which has to be officially gazetted under Section 15. In the case, for example, of the B. Pharm course conducted by the petitioner, what would be gazetted by the Central Council of the PCI is a declaration that the B. Pharm conducted by the petitioner is an approved course of study, empowering students undertaking the course of study to be admitted to an approved examination for Pharmacist. The gazetted declaration is required to be with respect to entire course of study. Section 15, therefore, supports Mr. Sharawat's contention that the course of study is the entire B. Pharm/M. Pharm/D. Pharm course, and not year of any of the said courses.

IX. Re. Section 12(1)

84. At this juncture, I may also deal with the contention advanced by Mr. Garg, predicated on the closing words of Section 12(1) – "to an approved examination for Pharmacists". Mr. Garg has sought to read these words, along with Section 12(2), to imply that the approval granted under Section 12(1) is only for one year of the course of study, which would culminate in the holding of examination. Reference to an approved examination, according to him, indicates that the course of study, which is approved, is also only for one year, culminating in an examination.

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85. The contention is misconceived.

86. Approval of an examination and approval of course of study are two different concepts. Even if the approval for the examination is to be granted yearly, that does not *ipso facto* indicate that there has to be yearly approval for the course of study. This is elementary. For example, the LL.B. Programme conducted by a University results in a student having to undertake examinations at the end of every semester or every year. The course of study remains one i.e. the LL.B. programme. Every year of the LL.B. programme does not, thereby, become an independent "course of study", in the absence of any specific statutory dispensation to that effect. Similarly, even if it were to be assumed that the examination conducted by the institution, for a course approved under Section 12(1) of the Act, has to be approved year to year, that does not by itself indicate that yearly approval is required for the course of study, which results in a student being eligible to undertake the examination.

87. The position that emerges is, therefore, that, if the institution has obtained approval for B. Pharm/D. Pharm as a course of study under Section 12(1) of the Act, the student undertaking that course of study would be entitled to appear in the examination conducted at the end of every year, even if it were to be assumed that in each year the examination has to be separately approved by the PCI.

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88. That said, Mr. Sharawat specifically contended that the PCI has never granted yearly approval of examinations under Section 12(1). There is no factual rebuttal to this assertion by the PCI. I do not deem it necessary to enter into that arena, however, as it is not necessary to decide the main issue in controversy, which is whether the course of study which is approved under Section 12(1) is the entire B. Pharm/D. Pharm course or only one year thereof, which has been answered above, and needs no repetition.

X. Re. Provisions for renewal as contained in the B. Pharm Regulations / D. Pharm Regulations and M. Pharm Regulations

89. Regulations 2 and 3 of the B. Pharm/M. Pharm/D. Pharm Regulations, as already noted, refers to the entire B. Pharm/M. Pharm/D. Pharm course as a course of study. There is no provision, in any of the Regulations, which supports Mr. Garg's contention that the course of study would only be one year of any of these courses. The B. Pharm Regulations and the D. Pharm Regulations, in fact, do not envisage any subsequent approval or continuation of approval being granted, once the B. Pharm or D. Pharm course stands approved under Section 12(1). The M. Pharm Regulations does envisage fresh approval being taken but at the end of five years, which is the entire duration of the M. Pharm course. The Education Regulations, therefore, do not support Mr. Garg's contention that an institution, which has obtained approval of its course of study under Section 12(1), has to apply for continuation of approval at the end of each year. They, in fact, indicate to the contrary.

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XI. Re. Annexure IV to the Scheme

90. The only reference to annual approval – if it may be called that – is to be found in the Table in Annexure IV to the Scheme for grant of approval to the B. Pharm/M. Pharm/D. Pharm courses. This reference is also only in the context of the terms and conditions applicable for payment of PERC. It cannot therefore constitute a source of power to empower the PCI to require institutions, which have already obtained approval for the courses conducted by them under Section 12(1) of the Act, to apply yearly for continuation of the approvals.

XII. Re. Section 10(2)(b) and (d)

91. The reliance by Mr. Garg on clauses (b) and (d) of Section 10(2) of the Act is also misconceived. These clauses cannot, in any manner of speaking, authorize the insistence by the PCI on institutions, such as the petitioner, which have already obtained approval for the courses conducted by them under Section 12(1), to obtain continuation of the approval on yearly basis. Section 10 empowers the PCI to frame Regulations. Section 10(2) specifies certain circumstances to which the Regulations may cater, without prejudice to the generality of Section 10(1). Clause (b) of Section 10(2) empowers the PCI to frame Regulation regarding the equipment and facilities to be provided to students. Clause (d) empowers the PCI to frame Regulations regarding continuation of admission to examinations.

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92. I am unable to understand how either of these clauses can empower the PCI to, by executive instructions, direct approved institutions to obtain yearly continuation of approval. Nothing further is required to be said on this contention.

XIII. Re. Section 3

93. Mr. Garg also sought to rely on Section 3 of the Act to contend that the PCI is an institution peopled by eminent personalities highly placed in the Government and elsewhere and that, therefore, their decision should not be lightly overturned.

94. No doubt, due respect is to be accorded to the stature of the individuals constituting the PCI, as well as to the decisions taken by them. That does not, however, mean that these decisions are immune from judicial scrutiny. Howsoever highly placed or eminent the personages constituting the PCI may be, if the decision to require approved institutions to obtain continuation of the approvals on a yearly basis is found to be unsustainable in law, that decision cannot be upheld merely because it is taken by a body of persons who are highly placed or eminent in their own right.

95. Section 3 cannot, therefore, legitimize the impugned decision.

XIV. Re: Statement of Objects and Reasons of the Act and Section 10(2)(c)

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96. Though Mr. Garg placed reliance on these provisions as well, they do not further the case of the respondents to any extent whatsoever. The Statement of Objects and Reasons does not contain anything which can justify the PCI calling on approved institutions to obtain yearly continuation of approval. Section 10(2)(c) empowers the PCI, by Regulations, to prescribe subjects of examination and standards to be attained therein.

XV. Regulation 3 of the B. Pharm Regulations

97. Regulation 3 of the B. Pharm Regulations, on which, too, Mr Garg relies, refers to the duration of the B. Pharm course and, in fact, militates against the contention that Mr. Garg espouses. Regulation 3 clearly states that the "duration of the course shall be four academic years (annual/semester) full time with each academic year spread over a period of not less than two hundred working days...."

98. Thus Regulation 3 itself distinguishes between the course and an academic year of the course. The Regulation, therefore, defeats Mr. Garg's contention that the course of study, for which approval is granted under Section 12(1), is one year of the entire B. Pharm/M.Pharm/D. Pharm course.

XVI. Regulation 4(B) of the B. Pharm Regulations

99. Regulation 4(B) of the B. Pharm Regulations, also cited by Mr Garg in his support, stipulates the minimum qualifications for

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admission by way of lateral entry to the second year/third semester of the B. Pharm programme. Mr. Garg's contention is that as Regulation 4(B) permits lateral entry of students to the B. Pharm course in the second year, the strength of the students in the second year may not be same as the strength in the first year. If the strength of the student changes, the requisite facilities which the Institution must possess, would also change. As the strength of the students may change year to year, Mr. Garg's contention is that there is no infirmity in the PCI calling on the Institution to obtain continuation of the approval at the end of every year.

100. The contention is wholly hypothetical. It proceeds on a premise that there will be a change in the number of students in the institution every year and that, therefore, the facilities which the institution is required to possess may have to be modulated on an year wise basis. The contention ignores in the process the fact that the approval that is granted is for a specific intake, which is sacrosanct. In the case of the B. Pharm course conducted by the petitioner, for example, the approval granted was for an annual intake of 60 students. While granting the said approval, therefore, the PCI is required to verify that the petitioner-institution complies with the norms and standards and possesses all requisite facilities and faculty as would enable it to provide education to 60 students and to run the B. Pharm course with that intake. So long as the intake remains within 60, therefore, the mere fact that some students may join by way of lateral entry in the second year or in the subsequent years, cannot constitute a

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justification for the PCI requiring the Institution to apply for continuation of approval every year.

101. Mr Garg cited, in his support, the decision in ***Priyadarshini Dental College***. The reliance is, in my opinion, misplaced. ***Priyadarshini Dental College*** dealt with a Rule incorporating a specific provision for yearly renewal. That case would, therefore, go to indicate, if anything, the necessity of a specific statutory dispensation, before the respondent could insist on approved institutions applying every year for continuation of approval.

102. In any event, given the provisions contained in Sections 12(3) and 16 of the Act, the PCI is well within its powers and authority to call on the petitioner or any other approved institution to periodically provide data which would satisfy the PCI that the institution continues to remain capable for providing education to the number of students which are studying in its premises. In that view of the matter, the mere fact that Regulation 4(B) of the B. Pharm Regulations provides for lateral entry in the second year of the B. Pharm course cannot justify the impugned decision.

XVII. Re. the *contemporanea expositio* principle

103. In invoking the *contemporanea expositio* doctrine, Mr Garg, with respect, fails to appreciate the exact nature of the principle, or take the limitations of the doctrine into account. Of the *contemporanea expositio* principle, the Supreme Court has cautioned

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thus, in ***Bhuwalka Steel Industries Ltd v. Bombay Iron and Steel Labour Board***[65]:

> "72. The other argument raised was on the basis of the maxim *contemporanea expositio est optima et fortissima in lege*, shortly stated, *contemporanea expositio*. According to Black's Law Dictionary, this is the doctrine, that the best meaning of a statute or document *is the one given by those who enacted it or signed it*, and that the meaning publicly given by contemporary or long professional usage is presumed to be the true one, even if the language may have a popular or an etymological meaning that is very different.
>
> 73. Shri Cama, learned Senior Counsel for the appellants argued that in the Committee's reports, right from 1963 clearly only those workers were viewed, who did not have the protection of the other labour laws and the Committee had identified only those manual workers who were engaged in loading and unloading operations. The reliance was made on Letter No. (C) 20206 dated 7-9-1992, written by one Shri G.K. Walawalkar, Desk Officer, informing that in an establishment till the workers doing mathadi type work are on their muster roll as direct workers and they are getting total protection and benefits under the various labour laws, till then such establishment shall not be included in the Mathadi Act or the schemes thereunder.
>
> 74. Two other letters were also referred to by the learned Senior Counsel. First letter was dated 10-5-1990 addressed to Western India Corrugated Box Manufacturers' Association, authored by one Divisional Officer, informing to the Chairman, Western India Corrugated Box Manufacturers' Association that the provisions of the Mathadi Act are not applicable to the directly employed workers (employed on permanent basis) by the company. Another letter was dated 3-10-1991 addressed to the Secretary, Mumbai Timber Merchants Association Ltd., specifying that the direct labourers of the employer doing loading/unloading work would not be covered by the said Act. Though these two letters were never procured, they were produced before us.
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> 75. Further, a reference was made to the letter of the Mathadi Board (Bombay Iron and Steel Labour Board) dated 17-11-1983, wherein the Mathadi Board understood and applied the Act only to that special class of workers doing loading and unloading operations in scheduled employments, who were in the regular employments of an employer and, therefore, were not protected by

[65] **(2010) 2 SCC 273**

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other applicable labour legislations. It was also urged that only after the impugned judgment was passed, the Mathadi Boards have started asking the employers to register them under the Act even if they are engaging regular full-time workers. It was urged that in ***Irkar Shahu v. Bombay Port Trust***[66], the Mathadi Board had taken such a position and they could not now turn back from their stance. From this, the learned Senior Counsel urged that since the State Government itself understood the provision in a particular manner, such understanding should be honoured by the courts.

76. The argument is clearly erroneous for the simple reason that *it is not the task of the State Government, more particularly, the executive branch to interpret the law; that is the task of the courts. Even if the State Government understood the Act in a particular manner, that cannot be a true and correct interpretation unless it is so held by the courts. Therefore, how the State Government officials understood the Act, is really irrelevant.*

77. The learned Senior Counsel, in his address, relied on the decision in ***Godawat Pan Masala Products I.P. Ltd. v. Union of India***[67] and more particularly, para 32 therein. There, Hon'ble Srikrishna, J. accepted the meaning of the provision concerned as it was understood by the State authorities. However, the learned Judge was careful enough to say that:

> "*32. … While this may not be really conclusive*, it certainly indicates the manner of the State authority viewing its power and the Rules under which it was exercising the power. The court can certainly take into account this situation on the doctrine of *contemporanea expositio*."
>
> (emphasis in original)

Therefore, this cannot be viewed to be an absolute doctrine. There are a number of authorities, which speak about the powers of the Court vis-à-vis this doctrine.

78. It has been held in ***Clyde Navigation Trustees v. Laird***[68], ***Assheton Smith v. Owen***[69] , ***Goldsmiths' Co. v. Wyatt***[70], ***Senior Electric Inspector v. Laxminarayan Chopra***[71], ***Raja Ram Jaiswal v. State of Bihar***[72] , ***J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India***[73] and ***Doypack Systems (P) Ltd. v. Union***

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[66] **(1994) 1 CLR 187 (Bom)**
[67] **(2004) 7 SCC 68**
[68] **(1883) 8 AC 658 (HL)**
[69] **(1906) 1 Ch 179 (CA)**
[70] **(1907) 1 KB 95 : (1904-07) All ER Rep 547 (CA)**
[71] **AIR 1962 SC 159**
[72] **AIR 1964 SC 828 : (1964) 1 Cri LJ 705**
[73] **1987 Supp SCC 350 : 1988 SCC (Tax) 26 : AIR 1988 SC 191**

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of India[74] that *even if the person who dealt with the Act understood it in a particular manner, that does not prevent the Court in giving to the Court, its true construction*. It is pointed out in the decision in ***Doypack Systems (P) Ltd.*** that *the doctrine is confined to the construction of ambiguous language used in very old statutes where indeed the language itself have had a rather different meaning in those days.*

79. The learned author, Justice Shri G.P. Singh, in his celebrated treatise quoted that:

> "Subject to use made of contemporary official statements and statutory instruments *the principle of contemporanea expositio is not applicable to a modern statute*."

Same subject has been dealt with in ***Punjab Traders v. State of Punjab***[75] . Considering this settled position, we do not think we are in a position to accept the contention raised. Same logic applies that even if the Mathadi Board's stand was somewhat contradictory in ***Irkar Shahu*** , it did not really create a bar against it from changing its stance for a correct interpretation of Section 2(11) of the Mathadi Act."

(Emphasis supplied)

104. Thus, the doctrine of *contemporanea expositio* has no application to modern statutes, such as the Pharmacy Act. It applies only to very old statutes, where the intention of those who framed the statute at that point of time may be enlightening. It cannot, in any case, be invoked to support the manner in which the executive, implementing the statute, chooses to interpret it. Again, it has no application where the statute is unambiguous, and does not admit of more than one meaning.

105. For all these reasons, the reliance, by Mr. Garg, on the *contemporanea expositio* principle is *ex facie* misguided.

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[74] **(1988) 2 SCC 299 : AIR 1988 SC 782**
[75] **(1991) 1 SCC 86**

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106. Besides, Mr. Sharawat is correct in his contention that the invocation by Mr. Garg on the principle of *contemporanea expositio*, is completely misconceived as there is no evidence of any contemporaneous understanding by the framers of the Act as restricting approval, under Section 12(1) thereof, to a yearly basis. The impugned communication can hardly constitute contemporaneous understanding for the purpose of invocation of the doctrine.

107. The Court cannot, therefore, upheld the impugned decision to call on institutions, such as the petitioners, to obtain continuation of approvals granted to them on an yearly basis by applying the principle of *contemporanea expositio*.

XVIII. The further sequitur

108. As a result, paras 10(ii), (iii) and (iv) of the impugned Circular dated 14 December 2023 are clearly contrary to the Act and the Education Regulations. The decision, as reflected therein, to require approved institutions to obtain yearly continuation of approval, cannot therefore sustain legal scrutiny and is liable to be quashed and set aside.

XIX. Re. demand for PERC

109. As I have found the requirement of yearly continuation of the approval granted under Section 12(1) of the Act to be illegal and

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without authority of law, there can be no question of any institution having to pay PERC repeatedly at the end of every year. The said demand has also, therefore, to fail.

Conclusion

110. In view of the aforesaid discussion, paras 10(ii), (iii) and (iv) of the impugned communication dated 14 December 2023, as well as the provisions to that effect as contained in the Approval Handbook, are quashed and set aside.

111. It is hereby declared that the approval granted to the course of study conducted by an institution under Section 12(1) is to the entire course of study and not to any one year thereof.

112. Such approval, once granted, is to apply, subject it is being liable to be withdrawn in accordance with Section 13. The PCI has no power or authority to call on any institution to obtain continuation of the approval granted under Section 12(1) every year, nor can the PCI require the Institution to pay PERC on an yearly basis to obtain continuation of the approval granted to the courses under Section 12(1).

113. The only exception is in the case of the M. Pharm course, for which the approval would have to be renewed after 5 years, as required by the M. Pharm Regulations.

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114. The writ petition accordingly succeeds and is allowed.

115. There shall be no orders as to costs.

116. Any amount deposited by the petitioners with the respondent as per the orders passed by this Court, subject to the outcome of the writ petition, shall be returned by the respondent to the petitioners within four weeks.

+ W.P.(C) 744/2024 and CM APPL. 3268/2024
+ W.P.(C) 798/2024 and CM APPL. 3436/2024
+ W.P.(C) 813/2024 and CM APPL. 3503/2024
+ W.P.(C) 816/2024 and CM APPL. 3511/2024
+ W.P.(C) 817/2024 and CM APPL. 3513/2024
+ W.P.(C) 827/2024 and CM APPL. 3527/2024
+ W.P.(C) 835/2024 and CM APPL. 3543/2024
+ W.P.(C) 837/2024 and CM APPL. 3546/2024
+ W.P.(C) 838/2024 and CM APPL. 3548/2024
+ W.P.(C) 842/2024 and CM APPL. 3557/2024
+ W.P.(C) 844/2024 and CM APPL. 3562/2024
+ W.P.(C) 1188/2024 and CM APPL. 4979/2024
+ W.P.(C) 1829/2024
+ W.P.(C) 2027/2024
+ W.P.(C) 2030/2024
+ W.P.(C) 2034/2024
+ W.P.(C) 2042/2024
+ W.P.(C) 2060/2024
+ W.P.(C) 2270/2024
+ W.P.(C) 2272/2024
+ W.P.(C) 2274/2024
+ W.P.(C) 2284/2024
+ W.P.(C) 2291/2024
+ W.P.(C) 2293/2024
+ W.P.(C) 2294/2024
+ W.P.(C) 2296/2024
+ W.P.(C) 2297/2024

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+ W.P.(C) 2307/2024
+ W.P.(C) 2313/2024
+ W.P.(C) 2318/2024
+ W.P.(C) 2319/2024
+ W.P.(C) 2320/2024
+ W.P.(C) 2377/2024
+ W.P.(C) 2378/2024
+ W.P.(C) 2379/2024
+ W.P.(C) 2380/2024
+ W.P.(C) 2381/2024
+ W.P.(C) 2388/2024
+ W.P.(C) 2390/2024
+ W.P.(C) 2395/2024
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+ W.P.(C) 2439/2024
+ W.P.(C) 2444/2024
+ W.P.(C) 2446/2024
+ W.P.(C) 2450/2024
+ W.P.(C) 2628/2024
+ W.P.(C) 2659/2024
+ W.P.(C) 2671/2024
+ W.P.(C) 2679/2024
+ W.P.(C) 3312/2024
+ W.P.(C) 3314/2024
+ W.P.(C) 3317/2024
+ W.P.(C) 3319/2024
+ W.P.(C) 3320/2024
+ W.P.(C) 3322/2024
+ W.P.(C) 3342/2024
+ W.P.(C) 4193/2024

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117. The challenge in all these petitions is identical to the challenge in W.P. (C) 617/2024. Accordingly, these petitions are allowed in the same terms, with no orders as to costs.

C.HARI SHANKAR, J

JULY 1, 2024/*yg*