**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No. 3766 of 2021**

**Reserved on : 07.03.2022**

**Delivered on : 22.04.2022**

1. Chouksey College Of Pharmacy Run By H.K. Kalchuri Educational Trust, Through its Director Mrs. Palak Jaiswal, W/o Shri Ashish Jaiswal, aged about 35 Years, having its Registered Office At Lal Khadan, Masturi Road, NH 49, Bilaspur Chhattisgarh

2. Palak Jaiswal, W/o Shri Ashish Jaiswal, aged about 35 Years Director, Chouksey College Of Pharmacy, having Its Registered Office At Lal Khadan, Masturi Road, Nh 49, Bilaspur Chhattisgarh

**---- Petitioners**

**Versus**

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1. Pharmacy Council Of India Through its Chairman/ Secretary, having Its Registered Office At NBBC Centre, 3rd Floor, Plot No. 2, Community Centre, Maa Ananadamai Marg, Okhla Phase I, New Delhi 110020, District : New Delhi, Delhi

2. Chhattisgarh Swami Vivekanand Technical University, Newai, P.O. Newai, District Durg Chhattisgarh- 491107

3. State Of Chhattisgarh Through its Secretary, Department Of Skill Development, Technical Education and Employment, Having Its Registered Office at Mahanadi Bhavan, Naya Raipur, Atal Nagar, District Raipur Chhattisgarh

**---- Respondents**

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| For Petitioners | : | Mr. Siddharth R. Gupta, Advocate along with Mr. Pranjal Agrawal, Advocate |
| For Respondents | : | Mr. Rajkumar Mishra, Asstt. S.G. along with Mr. Tushar Dhar Diwan, Advocate |

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**Hon'ble Mr. Justice P. Sam Koshy**
**CAV Order**

1. The validity and legality of two orders/resolutions passed by the respondent No.1-Pharmacy Council of India (PCI) dated 17.07.2019 (Annexure P/3) and 09.09.2019 (Annexure P/4) is under challenge in the present writ petition.

2. Vide the aforesaid two resolutions, the PCI has put a moratorium on the opening of new Pharmacy Colleges for running Diploma as well as Degree courses in Pharmacy for a period of 5 years beginning from the Academic Session 2020-21. Vide the order /resolution dated 09.09.2019 the PCI gave certain relaxations to the moratorium so far as its applicability is concerned.

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3. For proper appreciation of the facts and issues raised by the parties it would be relevant at this juncture to take note of the relevant portion of the two orders under challenge in this writ petition dated 17.07.2019 and 09.09.2019 passed by the PCI. The resolution that was passed by the PCI on 17.07.2019 is reproduced hereinunder:

> **"Taking into consideration the availability of sufficient qualified pharmacist workforce, the House unanimously resolved to put a moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-21. This moratorium shall not be applicable in the North Eastern region of the country where there is a shortage of pharmacy colleges."**
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> **The said resolution has been communicated to Ministry of Health and Family Welfare, Government of India on 17.07.2019 for information under intimation to All India Council of Technical Education (AICTE) and also posted on the Council's website.**

4. The said resolution stood modified on 09.09.2019 by which the respondents-PCI has passed an order of non-applicability of the said resolution on certain category of institutions and in respect of certain

areas in the country. For ready reference the relevant portion questioning the order dated 09.09.2019 (Annexure P/4) is reproduced hereinunder:

> **"It was unanimously decided that moratorium on the opening of new pharmacy colleges for running Diploma as well as Degree course in pharmacy for a period of five years beginning from the academic year 2020-21 will be subject to following conditions:**
>
> > **(a) The moratorium will not apply to the Government institutions.**
> >
> > **(b) The moratorium will not apply to the institutions in North Eastern region.**
> >
> > **(c) The moratorium will not apply to the States/Union Territories where the number of D. Pharm and B. Pharm institutions (both combined) is less than 50.**
> >
> > **(d) The institutions which had applied for opening D. Pharm and/or B. Pharm colleges for 2019-20 academic session either to the PCI or to the AICTE and the proposal was rejected or not inspected due to some reason or the other will be allowed to apply for 2020-21 academic session and this relaxation is given only for one year i.e. for 2020-21 academic session only.**
> >
> > **(e) Existing approved pharmacy institutions will be allowed to apply for increase in intake capacity as per PCI norms and/or to start additional pharmacy course(s).**

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5. Before proceeding further with the issue involved in the matter, it would be also relevant at this juncture to take note of the reasons, which led to the issuance of the moratorium by the PCI. The reasons as spelt out in the order of the PCI dated 17.07.2019 are as under:-

> **"During the 106th Central Council meeting of the PCI held on 9th & 10th April, 2019, a concern was expressed about the mushrooming of pharmacy colleges in the country. The issue was threadbarely deliberated. It was noted that-**
>
> > **(a) There are approximately 1,985 D. Pharm and 1,439 B. Pharm institutes in the country. The annual intake of students in these institutes (both D. Pharm and B. Pharm) is 2,19,279/**
> >
> > **(b) This available workforce is enough to meet the current pharmacist-to-population needs of the country.**
> >
> > **(c) The rapid increase in the number of pharmacy colleges over the last decade may result in shortage of trained and qualified teaching faculty which may affect the quality of education imparted to students.**

> **(d) The pass out students are not getting reasonably paid job opportunities in public as well as in private sector."**

6. The same reasons were again reiterated by the PCI in its order dated 09.09.2019 while modifying the earlier order dated 17.07.2019, which again for ready reference is being reproduced hereinunder:

> **"The matter was placed before the 107th Central Council in its meeting held on the 5th & 6th August, 2019 which noted that the spirit of the moratorium is to ensure-**
>
> *** quality assurance in pharmacy education.**
>
> *** availability of job opportunities to already available pharmacist workforce which is enough to meet the current pharmacist-to-population needs of the country as there are approximately 1,985 D. Pharm and 1,439 B. Pharm institutes in the country with an annual intake of more than 2.19 lakhs.**
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> *** that there is no shortage of qualified faculty.**

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7. The aforementioned reasons given by the PCI gives a clear indication as to the reasons and grounds which led to the passing of the moratorium for a period of 5 years. The petitioners are a private unaided Self Financing Institution. The petitioners-establishment is a part of charitable trust titled as 'H.K. Kalchuri Educational Trust', which has educational institutions which impart other educational, technical and professional courses as well.

8. The facts which led to the filing of the present writ petition is that the petitioner No.1 with an intention of opening of an institution imparting courses of Pharmacy i.e. B. Pharm (Bachelor Pharmacy courses) and D. Pharm (Diploma of Pharmacy courses) had approached the PCI. When the petitioners approached the respondent-PCI in respect of their intention of establishment of an institution imparting courses of Pharmacy, they were informed of the impugned moratorium that was imposed by the PCI vide order dated 17.07.2019 and 09.09.2019. It is then that the petitioners thought of challenging the said two orders which is otherwise

coming in the way of the petitioners in establishing the institution which would impart courses of Pharmacy.

9. It is also necessary to bear in mind the fact that in the State of Chhattisgarh, there is admittedly lack of basic medical facilities much less basic infrastructure required for providing the medical facilities to the general public particularly in the Semi-Urban, Rural and the Interior Areas of the State. There is acute shortage of Doctors, Paramedical Staff and People with Pharmacy background, who are the best persons and resources required for improving the medical facilities in a State. In the backdrop of the COVID-19 Pandemic that hit the universe for the last two years, the State has also witnessed the alarming need and necessity of Doctors, Paramedical Staffs and People with Pharmacy background throughout the State of Chhattisgarh, particularly into the Rural and Interior Areas which are predominantly tribal belts.

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10. In the absence of sufficient medical facilities from qualified trained personnels there is an alarming rise of quacks and people with very little medical knowledge and people without proper qualification and authority providing medical services in these parts of the State. Thus, the State of Chhattisgarh has its own peculiar demands and necessities when it comes to issues relating to health, medical and Pharma care. Given the aforesaid socio-graphical conditions, the blanket moratorium imposed by the PCI would further create a vacuum in the field of Pharma Care in the State of Chhattisgarh.

11. As regards the challenge to the two circulars and orders of the PCI dated 17.07.2019 and 09.09.2019, the first ground of challenge is that the two orders would not have a force of law as it does not fulfill the requirement

as stipulated in Section 10 of the Pharmacy Act, 1948. According to the petitioners, if at all if it is a regulation framed and issued by the PCI under Section 10 of the aforementioned Act of 1948, it needs to be published in an official Gazette. That, unless it is published in an official Gazette, it cannot be accepted to be a regulation and if it is not a regulation in terms of Section 10, the said orders would not have a force of law. Unless it is a properly issued regulation, as is required under Section 10 read with Section 15 of the Pharmacy Act, it cannot be accepted to have a force of law.

12. The second contention of the petitioners assailing the two orders/circulars of the PCI is that the power conferred upon the PCI to regulate the profession of Pharmacy does not provide the power to prohibit. According to the petitioners, the power to regulate would not automatically include the power to prohibit as well, except in exceptional cases and situations, which too should be spelt out under the statutes or the rules framed thereunder. In the absence of any such power empowering the PCI to impose a ban or a prohibition in establishment of new colleges and institutions the two impugned circulars issued by the PCI is not sustainable and the same deserves to be interfered by this Court, declaring it to be bad in law and arbitrary.

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13. The third issue raised by the petitioners is that of the two orders being violative of Article 14 of the Constitution of India as it has led to ex facie discrimination particularly in the light of the relaxation that was given in the impugned order Annexure P/4 dated 09.09.2019. The 4th ground on which the challenge has been made is that the two orders under challenge in the present writ petition issued by the PCI also is violative of Article 19(1)(g) of the Constitution of India. It infringes the right of the

petitioners of practicing any profession or to carry on any occupation, trade or business, which in the instant case according to the petitioners is that of establishment of an educational institution from where he intends to impart courses related to Pharmacy.

14. Another issue which the petitioners have raised is as to the action on the part of the respondents being an act of monopolistic ban being created only against the people or persons who intend to start a new course/courses in the field of Pharmacy. Thus, the said two orders of the Pharmacy council of India would be highly discriminatory, without there being any cogent and strong rational for the imposition of the ban. The other ground raised by the petitioners is that the resolution passed by the respondent Pharmacy council is also violative of the provisions of Pharmacy Act inasmuch as there has been no consultation done with Central Government or the State of Chhattisgarh or for that matter with any of the State Government before imposing the said ban which is otherwise also required in terms of the Section 10 & Section 11 of the Pharmacy Act.

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15. Learned ASG representing the Union of India as also the Pharmacy Council of India laid emphasis on the objects and reasons leading to the enactment of the Pharmacy Act. According to the ASG the very purpose of having the Pharmacy Act was to ensure proper regulation of the institution imparting courses on Pharmacy. Learned counsel for the respondents submitted that the fact that Pharmacy council has been authorized to regulate the institutions imparting pharmacy courses includes the power of prohibition in the event circumstances so require. Further contention of the learned ASG was that it was a policy decision of the PCI to impose moratorium and the decision was to ensure that

legislative object of regulating entry into the profession of Pharmacy with minimum standard of education is fulfilled.

16. It is further contention of the ASG that both the resolutions passed by the Pharmacy Council have been duly communicated to the Government of India, Ministry of Health who have till now not raised any objection in respect of the two resolutions. Therefore, it has to be presumed that the two resolutions had the requisite consent and approval of the Government of India also. Referring to the judgment of the Hon'ble Supreme Court in the case of **Jawaharlal Nehru Technological University Registrar Vs. Sangam Laxmi Bai Vidyapeet and Others, (2019) 17 SCC 729**, the learned ASG submitted that the Supreme Court in the said judgment taking into consideration the fact that paucity of well qualified Teachers in the field of Pharmacy had observed that in the given factual backdrop mushrooming growth of institutions could not be permitted. That it is for this reason that the Pharmacy Council of India taking into consideration the large number of students qualifying each year and considering the limited scope of providing employment to all the students passing out as on date have taken a policy decision imposing a moratorium of 5 years after which the PCI would itself review its decision so far as the extending of the moratorium is concerned. The ASG further submitted that since almost 2 ½ -3 years have already passed from the time these moratorium was first imposed, there is no scope of judicial interference at this juncture made out as after about in less than two years time the PCI in any case would be taking a decision so far as moratorium is concerned. Learned ASG submitted that the right to regulate does not mean that there is no right to prohibit. According to the counsel for the respondents once when there is a power of regulation

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entrusted upon the PCI it would also have the power to impose restriction and also the power to prohibit and the fact that the moratorium is only for 5 years itself would establish that it is not an absolute prohibition.

17. Referring to Section 10 of the Pharmacy Act, learned ASG submitted that enough powers have been provided to the PCI not only to regulate the profession of pharmacy but also regulating the educational institutions imparting pharmacy courses. Referring to the constitution of PCI and various experts involved in the said Council, learned ASG contended that the PCI has enough and wide representation from the field of pharmacy, as also various statutory expert bodies and also the officials and representatives of the Central Govt. as also from each of the State Pharmacy Council so also from each of the State Govt.. It is this body consisting of experts in the field of pharmacy who have taken the decision. Therefore, for all practical purposes it has to be presumed that it has all the concurrence and approval of the Central Govt. as also of the State Govt.

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18. Learned ASG further submitted that the intention and object behind issuance of the order of moratorium was to ensure that quality of education in the field of pharmacy is improved. Further the job opportunities for the students who are presently undertaking the course of pharmacy can also be accelerated during these five years period of moratorium. The further contention of ASG was that it is not that the decision has been taken unilaterally or without application of mind, rather it is a case where the decision of the PCI was, taking into consideration various factors like sufficient pharmacy qualified workforce already available in the society, the existing annual intake of students, likewise also the shortage of trained and qualified faculty, job opportunities to the

graduating students and the availability of pharmacists to the population ratio in India. If these were the consideration for imposition of moratorium, the same cannot be said to be either arbitrary, illegal or contrary to law.

19. In support of their contention, learned ASG relied upon the decisions rendered in 2019 (17) SCC 729, AIR 1954 SC 634, 2020 SCC Online SC 296, 2010 (3) SCC 616, 2019 (2) SCC 104. The respondents further relied upon the recent decision of the Bombay High Court in the case of Sayali Charitable Trust Vs. The Pharmacy Council of India, WP No. 4919/2020 decided on 06.11.2020.

20. Having heard the contentions put forth on behalf of either side it would be relevant at this juncture to take note of certain statutory provisions under the Pharmacy Act, 1948. The very object and reason behind framing of the Pharmacy Act, 1948 was to ensure that only persons with a minimum standard of professional education should be permitted to practice the profession of pharmacy.

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21. It was in the aforesaid context that it was proposed to have a central council of pharmacy which was further empowered to prescribe the minimum standard of education and approve courses of studies and examination for pharmacists. Further for establishment of state pharmacy councils which will be responsible for the maintenance of the State Registers of the qualified pharmacists. Section 10 of the Pharmacy Act, 1948 empowers the Central Council with the approval of the Central Govt. to make regulations. For ready reference Section 10 of the Pharmacy Act is reproduced hereinunder:

> "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 condition s of admission to examinations.
> (3) Copies of the draft of the Education Regulations and of all Subsequent amendments thereof shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under sub-section (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.
> (4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct.
> (5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit."

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22. After issuance of regulations by the Central Council comes the next stage as to how these regulations would be made applicable to different States. Section 11 referring to the application of education regulations in the State reads as under:

> "11. Application of Education Regulations to States – At any time after the constitution of the State Council under Chapter III and after consultation with the State Council, the State Government may, by notification in the Official Gazette, declare that the Education Regulations shall take effect in the State.
>
> Provided that where no such declaration has been made, the Education Regulations shall take effect in the State on the expiry of three years from the date of the constitution of the State Council."

23. What is also relevant at this juncture is that under Section 12 an institution which desires to impart courses of pharmacy is required to apply to the Central Council for approval of courses and the Central Council grants approval after such enquiry as it thinks fit, ensuring that the course of study is in conformity with the education regulations issued by the Central Council. Likewise, Section 13 of the said Act empowers the Central

Council the power of withdrawal of approval in the event if it is found that the approved courses of study or the examination is found to be not in consonance with the regulations published under Section 10.

24. At the first instance, what is required to be considered is whether the two resolutions of the PCI can be considered to be regulation under Section 10 of the Pharmacy Act. If it is a regulation under Section 10 and if the regulation has to be made applicable in the entire country, then the requirement as is otherwise laid down under Section 11 has been met or not.

25. The plain reading of Sections 10 and 11 would clearly indicate that the regulations under Section 10 must get the approval of the Central Govt. so as to make it enforceable. Likewise, in order to apply the education regulations to the States there has to be a notification by the State Govt. in the official gazette.

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26. In the instant case admittedly there is no such official approval received from the Central Govt. at the first instance nor is there any such notification published in the official Gazette by the State Govt. In the absence of either the approval from the Central Govt. or the required notification under Section 11 by the State Govt., it would be difficult to presume that a resolution passed by the Central Council automatically becomes enforceable. In this context it would be relevant to take note of the decision of the Delhi High Court in the case of **Kripanidhi Education Trust and Others Vs. The Secretary, Pharmacy Council of India & Ors, AIR 1992 Delhi 238** where in relevant part of paragraph 9 & 10, it has been held as under:

> "9.The fact remains that there is no approval of any such policy decision by the Central Government which is requirement of Section 10 of the Act.

> In our view, this policy decision will form part of the Education Regulations and for that purpose necessary formalities have to be gone into.
>
> The Act and the Education Regulations fully empower the Central Council, i.e. the Pharmacy Council of India, to prescribe course of study for the purpose of admission to an approved examination for Pharmacists and then to oversee the working of the authority conducting the approved course of study for pharmacists and also holding examination for them. Approval to an authority for conducting the course of study and to an authority for conducting examination can be granted by the Pharmacy Council of India only if the authority conducts itself in conformity with the Education Regulations. The Pharmacy Council of India has power to restrict the number of seats for admission to an approved course of pharmacy so long the conditions prescribed in Appendix-B of the Regulations are not fulfilled. At the same time, the Regulations do not authorise the Pharmacy Council of India to ban altogether the increase in number of seats if the authority under Section 12(1) of the Act fulfills all the conditions laid by the Act and the Education Regulations."
>
> 10. We are, therefore, of the opinion that while the Pharmacy Council of India has power to accord or not to accord its approval to the increase in number of seats, but it cannot act on its policy decision referred to above and communicated by letter dated 12 December 1989. Since nothing has been said in the return for the basis of such a decision which would also appear to be outside the Education Regulations and is without the approval of the Central Government and has not been promulgated in accordance with Section 10 of the Act, it suffers from the vice of arbitrariness. That policy decision has, therefore, to be quashed."

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27. Once when the resolutions are made applicable for the entire country, the same gets a colour of subordinate legislation and it cannot be treated as directory nor can the requirement as is envisaged under Section 10 & 11 be treated as directory. In the case of **I.T.C. Bhadrachalam Paperboards**

**and Another Vs. Mandal Revenue Officer, AP and others, 1996 (6) SCC 634** it has been categorically held by the Hon'ble Supreme Court that if the Act postulates the requirement of publication of any subordinate legislation or decision in the official gazette then the said requirement has to be treated as mandatory and not directory. According to the Supreme Court, it then becomes indispensable and in the absence of publication in the official gazette the decision or the subordinate legislation is completely stillborn, non-est and would have no legal enforceability. For ready reference paragraphs 13 & 15 of the said judgment is reproduced hereinunder:

> "13. The first question we have to answer is whether the publication of the exemption notification in the Andhra Pradesh Gazette, as required by Section 11(1) of the Act, is mandatory or merely directory? Section 11(1) requires that an order made thereunder should be (i) published in the Andhra Pradesh Gazette and (ii) must set out the grounds for granting the exemption. The exemption may be on a permanent basis or for a specified period and shall be subject to such restrictions or conditions as the government may deem necessary. Dri Sorabjee's contention is that while the requirements that the power under Section 11 should be expressed through an order, that it must contain the grounds for granting exemption and that the order should specifiy whether the exemption is on a permananet basis or for a specified period are mandatory, the requirement of publication in the Gazette is not. According to the learned counsel, the said requirement is merely directory. It is enough, says the counsel, if due publicity is given to the order. He relies upon certain decisions to which we shall presently refer. We find it difficult to agree. The power under Section 11 is in the nature of conditional legislation, as would be explained later. The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the government. Publication of an order or rule in the Gazette is the official confirmation of making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspaper or may be broadcast by radio or television. If a question arises when was a particular order or rule was made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media [ See Pankaj Jain Agencies v. Union of India [1994 (5) S.C.C.198]. In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day [ where the order or rule takes effect from the date of its publication] and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an Act, Rule or Order. Section 83 of the Evidence Act,1972 says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount inconvenience, delay and unnecessary controversies. It is for this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one - directory requirement - is, in our opinion, unacceptable. Section 21 of the Andhra Pradesh General Clauses Act says that even where

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> an Act or rule provides merely for publication but does not say expressly that it shall be published in the official Gazette, it would be deemed to have been duly made if it is published in the official Gazette*. As observed by Khanna,J., speaking for himself andShelat, J. in Sammbha Nath Jha v. Kedar Prasad Sinha & Ors. [1972 (1) S.C.C.573 at 578 para 17], the requirement of publication in the Gazette "is an imperative requirement and cannot be dispensed with". The learned Judge was dealing with Section 3(1) of the Commissions of Inquiry Act, 1952 which provides inter alia that a Commission of Inquiry shall be appointed "by notification in the Official Gazette". The learned Judge held that the said requirement is mandatory and cannot be dispensed with. The learned Judge further observed: (SCC p.578, para 17)
>
> "The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the various allegations in the present case was a part of the notification, dated March 12, 1968 and specified definite matters of public importance which were to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the statutory requirement. The object of publication in an official Gazette is twofold: to give publicity to the notification and further to provide authenticity to the contents of that notification in case some dispute arises with regard to the contents."
>
> 15. The above decisions of this Court make it clear that where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and that such a requirement is imperative and cannot be dispensed with."

28. The aforesaid view of the Hon'ble Supreme Court stood further reiterated yet in another case reported in **2010 (1) SCC 730** in the case of **Rajendra Agricultural University Vs. Ashok Kumar Prasad and others** where again in paragraph-13 it has been held as under:

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> "13. The learned counsel for the respondent contended that the requirement in section 36 of the Act relating to publication in the official Gazette should, contextually be considered as directory and not mandatory. He submitted that there was a significant difference between the requirement of assent of the Chancellor for a statute under sub- section (2) of section 36 and the requirement relating to publication of the statute in the official Gazette under sub-section (4) of section 36. He pointed out that sub-section (3) made it clear that in the absence of assent by the Chancellor under sub-section (2), the Statute was not valid. Thus, the consequence of non-compliance with the requirement relating to assent of the Chancellor was specified in the section itself. On the other hand, though sub-section (4) of section 36 requires that the statute should be published in the official gazette, there is no provision similar to sub- section (3) providing that the statute will not be valid unless it is published in the official Gazette. He therefore contended that the requirement relating to assent of the Vice-Chancellor to the statute was mandatory, but publication in the official Gazette was only directory. "

29. The aforesaid principles and ratio laid down by the Supreme Court has also been consistent even while deciding the cases in the matter of V. K. Srinivasan & another Vs. State of Karnataka & Ors. 1987 (1) SCC 658, Union of India & Ors. Vs. Ganesh Das Bhojraj 2000 (9) SCC 461. Very recently the same view has also been taken by the High Court of Delhi in

the case of **Shaheed Teg Bahadur College of Pharmacy Vs. The Pharmacy Council of India** wherein again the very same resolution of the PCI was under challenge.

30. The next issue that needs to be considered is, does the Pharmacy Council of India have the power to pass Regulation of the nature of moratorium for the establishment of new Colleges and Institutions imparting the pharmacy courses.

31. At this juncture, it would be relevant to consider the powers entrusted with the Pharmacy Council of India. Section 18 of the Pharmacy Act, 1948 provides for the various powers which are conferred upon the Central Council. The provisions of Section 18 as provided under the Pharmacy Act for ready reference are reproduced herein under:-

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**"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.**

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

**[(a) the management of the property of the Central Council;]**

**(b) the manner in which elections under this Chapter shall be conducted;**

**(c) the summoning and holding of meetings of the Central Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;**

**(d) the functions of the Executive Committee, the summoning and holding meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;**

**(e) the powers and duties of the President and Vice-President;**

**(f) the qualifications, the term of office and the powers and duties of the [Registrar, Secretary], Inspectors and other officers and servants of the Central Council, including the amount and nature of the security to be furnished by the [Registrar or any other officer or servant].**

**[(g) the manner in which the Central Register shall be maintained and given publicity;**

**(h) constitution and functions of the committees other than Executive Committee, the summoning and holding of meetings thereof, the time and place at which such meetings shall be held, and the number of members necessary to constitute the quorum.]**

**(3) Until regulations are made by the Central Council under this section, the President may, with the previous sanction of the Central Government, make such regulations under this section, including those to provide for the manner in which the first elections to the Central Council shall be**

**conducted, as may be necessary for carrying into effect the provisions of this Chapter, and any regulations so made may be altered or rescinded by the Central Council in exercise of its powers under this section.**

**[(4) Every regulation made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]"**

32. Sub-section (1) of Section 18 requires the approval of the Central Government and a Notification in the Official Gazette while making of the Regulations. From the aforesaid provisions of law, it is evidently clear that mere information being provided to the Central Government would not suffice in the course of framing of Regulations by the Central Council. The clear mandate required is the specific approval of the Central Government coupled with the publication of it by way of a Notification in the Official Gazette. Nowhere does the entire Pharmacy Act, empower the Central Council to frame Regulations without it being published in the Official Gazette and without having the approval of the Central Government. In the instant case, the Pharmacy Council of India has not been able to show the approval of the Central Government nor is there any publication made in the Official Gazette by way of a Notification.

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33. As regards Sub-section (2) of Section 18, the said provision primarily deals with the functioning of the Central Council itself and the same does not relate to the Regulations relating to the Institutions imparting the pharmacy courses. Thus, it is evidently clear that the two resolutions of the Pharmacy Council of India do not meet the requirement as is required under sub-section (1) of Section 18 of the Pharmacy Act.

34. Similarly, when we study Section 12 of the Pharmacy Act, it requires the approval of the Pharmacy Council of India by the Institutions intending to start the courses in pharmacy. For the purpose of grant of approval, the Central Council or the Pharmacy Council of India has to conduct an enquiry as it thinks fit ensuring that the standards prescribed by the Pharmacy Council of India and also the Education Regulations published by the Pharmacy Council of India are being followed or have been adhered to, by the Establishment which has moved an application for grant of approval. Further, in continuation, Section 13 empowers the Central Council for withdrawal of the approval earlier granted when upon enquiry it is found that the approved course of study or an approved examination is not in conformity with the Education Regulations with the Pharmacy Council of India. These two provisions also clarify the fact that as such no any power has been conferred on the Central Council or the Pharmacy Council of India to take a decision or pass a resolution imposing moratorium banning the establishment of new Colleges and Institutions for the purpose of imparting the Pharmacy Courses.

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35. Now, coming to the powers the Pharmacy Act confers upon the Pharmacy Council of India so far as making of Education Regulations are concerned, it is necessary at this juncture to refer to Section 10 of the Pharmacy Act, the contents of which have already been reproduced in the preceding paragraph. Sub-section (1) of Section 10 envisages the powers conferred upon the Pharmacy Council of India so far as making of rules and regulations are concerned. But what is also relevant to take note of is the fact that sub-section (2) of Section 10 specifically provides for the nature of Regulations which can be passed by the Pharmacy Council of India. Broadly it can be classified as Regulations with an intention of prescribing

the minimum standards of education required for the courses relating to pharmacy. This again is a provision which is applicable or comes into the play after an Institution is established and has been approved for imparting courses relating to pharmacy. Nowhere does the Section 10 relate to a stage prior to the establishment of an Institution imparting the pharmacy courses.

36. Sub-section (2) of Section 10 broadens the area of passing Regulations. But, in all the cases, it relates to, the period of study, nature of study required, granting of practical training, the equipments and other facilities provided to the students, the standards of examination, mode of examination and other conditions of admission and examinations etc. Nowhere does this provision empower the Pharmacy Council of India to take decisions banning the individuals in establishing new Institutions with an aim of imparting the courses relating to pharmacy or the power to ban or restrict establishment of new colleges for Pharmacy Courses.

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37. From the aforesaid provisions discussed in the preceding paragraphs it is evidently clear that Act does not provide for a necessary power with the PCI empowering them to take decisions particularly putting an embargo on the establishment of new institutions imparting courses in Pharmacy

38. From all the above provisions, it is clear that nowhere under the Act is any power conferred implicitly or explicitly on the PCI for imposing a blanket ban of the nature, which they imposed. Since the impugned orders create a prohibition having the effect of affecting substantive and fundamental rights enjoined with the institutions or entities intending to open new pharmacy institutions, therefore they need to derive authority from the parent enactment or the rules framed thereunder. It is trite law that

whenever substantive obligation, rights or interests are being impaired or adversely affected by the decisions/orders of delegatee under enactment or through any piece of subordinate legislation, then its source must be traced within express provisions in the four corners of the parent enactment, in the absence of which, it cannot be sustained.

39. That the Hon'ble Supreme Court in the matter of **Union of India and Ors. V. S. Srinivasan and ors. (2012) 7 SCC 683**, interpreting the rule making authority of the delegatee under the parent enactment observed as follows:

> 21. At this stage, it is apposite to state about the rule making powers of a delegating authority. If a rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.
>
> 23. In Delhi Administration v. Shri Ram[(2000) 5 SCC 451] : AIR 2000 SC 2143, it has been ruled that it is a well recognised principle that the conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.
>
> 24. In Sukhdev Singh v. Bhagat Ram Sardar Singh Raghuwanshi (1975) 1 SCC (L&S) 101 : AIR 1975 SC 1331, the Constitution Bench has held that: the statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed."

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40. What is next required to be considered imposing whether the grounds and reasons assigned for imposing an embargo is proper legal and justified. The reasons and contentions which has been already reproduced by this Court in the initial part of this judgment. The primary reasons assigned by the Central Council of the Pharmacy Council of India in its meeting held on 9th & 10th of April, was that there was already sufficient number of institutions available imparting Pharmacy Courses and more than 2.19 Lakhs students in a given year undertaking the Pharmacy Courses. There was no further need for further establishing new colleges with further intake capacity. The other ground on which the moratorium was imposed is the non availability of sufficient source of employment to meet the current demand as compared to the Pharmacist to population ratio. Further contention being the large scale mushrooming of Pharmacy colleges which has led to the shortage of trained and qualified teaching faculty. Therefore the education and standard of education would get adversely affected and it was this very same ground and reasons which were again taken into consideration by the PCI while the earlier order dated 17.07.2019 being modified vide resolution dated 09.09.2019.

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41. Now what is also to be appreciated is the fact that for all the aforesaid major grounds the PCI thought of imposing moratorium in the entire country and at the same time it was resolved not to apply the said resolution in the North-Eastern Region of India. However, when the subsequent resolution was passed on 09.09.2019, the embargo which was initially made applicable through out India except for North-Eastern Region stood relaxed. In addition to the resolution not being applicable in the North Eastern Region it was also resolved that it would not apply to

States and Union Territories where the number of institutions is less than 50. Similarly, relaxations were also granted for institutions which had already applied for opening of the Pharmacy Colleges for the Academic Year 2019-20 and in whose case the proposals were either rejected or not inspected due to some reason. Similarly, it was also resolved that so far as the existing approved Pharmacy institutions are concerned, they will be permitted to apply for further increase in the intake capacity and can also apply for starting of additional Pharmacy Courses.

42. Now what is to be considered is that, would not the conditions on which the moratorium was issued become redundant or self contradictory when compared to the relaxations which have been provided in certain categories of institutions and States vide resolution dated 09.09.2019. If non availability of sufficient source of employment being one of the major reasons for putting an embargo, the PCI at the same breath is not justified when it permits the existing institutions imparting Pharmacy courses permitting them to apply for further increase of the intake capacity. Similarly the condition of relaxation to those institutions which had already applied and in whose case even if there is an order of rejection even though the order of rejection is not quashed by any Court of law, they would also become entitled for applying which again is directly in conflict with the grounds and contentions on which the moratorium was issued. So also the condition of moratorium not being applicable in States where the total number of institutions are less than 50 seems to be totally unreasonable because that can lead to a situation wherein in certain States some Districts may be geographically larger than many of the other States. The population of one district in a given case can also be more than the population of many smaller States.

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Further more, the condition of non availability of sufficient source of recruitment remains the same even in those cases where the number of institutions in a State is less than 50. This again is directly in conflict with the intention/object and purpose for which the moratorium was imposed.

43. If on account of non availability of sufficient employment for qualified persons and to tackle such a situation imposition of Moratorium on establishment of new colleges is a solution, then a vast majority of colleges in the whole Country will have to be closed down taking into consideration the large scale unemployment in the whole Country.

Not being able to provide sufficient opportunity of employment cannot be a ground for denial of Permission to establish a new College.

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44. Under Article 19 1 (g) citizens of India has been guaranteed, to practice any profession or to carry on any occupation, trade or business. This fundamental right includes the liberty or a right of an individual to establish educational institutions in accordance with statutory provisions governing the field. Once when establishment and commencement of an educational institution being a fundamental right guaranteed under Article 19 1 (g) of Constitution of India, can PCI in particular issue executive instructions imposing a ban on establishment and commencement of educational institution for a period of 5 years. If we read Clause 6 of Article 19 it clearly indicates that any restriction on the right so conferred under 19 1 (g) can be imposed only by the State. For ready reference Clause 6 of Article 19 is being reproduced hereinunder :-

> "6. Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 6 [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to

> (i)the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
>
> (ii)the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise]."

45. It would also be relevant at this juncture to refer to Article 13 of the Constitution of India. For ready reference Article 13(1) and Article 13(3) is being reproduced hereinunder :-

> ` ***13. Laws inconsistent with or in derogation of the fundamental rights:***
>
> "1.All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
>
> 3.In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

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46. From the plain reading of the aforesaid provisions of Constitution of India it clearly reflects that anything which is inconsistent to the provisions of the Constitution shall be to the extent of such inconsistency would be void. That any restriction and embargo so far as establishment and commencement of educational institutions are concerned, the same can only be imposed by State. Article 13 does not provide for imposition of such restrictions and regulations by way of executive instructions. As such, regulations and resolutions in the nature of executive instructions issued by the PCI amounts to impingement upon the fundamental right of a citizen and or a juristic person.

47. The aforesaid view of this Court all the more becomes relevant in the light of the conclusion earlier drawn in this judgement where it has been held that the Pharmacy Act 1948 nowhere confers the power upon PCI to ban or put a moratorium so far as opening of new Pharmacy institution in the Country. The petitioners herein is a private unaided self financing

institution with no financial obligation owed to the State Government. The petitioner who intends to establish and commence and operate an institution imparting Pharmacy course would be otherwise bound by only the requirement of the various statutory provisions as also the regulations issued by the various statutory agencies otherwise required for the purpose of establishment and commencement of an institution related to the Pharmacy course.

48. As regards the ground of mushrooming pharmacy colleges and shortage of trained and qualified teaching faculty which could affect the quality of education. These are all matters of regulation and verification to be taken note of by the Pharmacy council in terms of the provision of Pharmacy Act and the various regulations. Under the said Act as also that which is laid down by the All India Council for Technical Education etc. subject to the petitioners meeting all the requirements otherwise required in terms of the pharmacy Act and regulations and instructions governing the field particularly in respect of availability of required infrastructure the availability of the qualified and trained teaching faculty etc. etc. there is no reason why and how the pharmacy Council of India can restrict somebody's right and that too a fundamental right.

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49. From the above exposition, it is thus clear that the right to establish, commence and operate an educational institution of their choice is a fundamental right, guaranteed to any person or an entity so provided under Article 19(1)(g) of the Constitution of India. Having stated that the aforementioned is a fundamental right, the same can be abridged only under a 'law', fitting in within the four corners of Article 13(3)(a) of Constitution of India.

50. Thus from the above, it is clear that impugned DO's issued by the PCI amount to denuding any entity of their fundamental right to Occupation, i.e. opening or establishing of a new pharmacy institution. Even though the said restriction is for a limited period, i.e. 5 years, then also for the restriction to operate even for a minimal period of time, it has to figure within the four corners of Article 19(1)(g), Article 19(2) read with Article 13(3)(a) of the Constitution of India. Since the 'executive instructions' failed to meet the basic character required to impinging upon the fundamental rights, therefore on the said ground, the 'executive instructions' cannot hit or adversely affect the fundamental rights of the Petitioners to start a new Pharmacy Institution at the time and moment of their choice. For this ground, therefore the impugned DO's must be treated to be ineffective and bereft of any fangs.

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51. It is relevant at this juncture to take note that the two impugned resolution of the PCI under challenge in the present writ petition dated 17.07.2019 & 09.09.2019 Annexure P-3 & Annexure P-4 was already put to test in a bunch of writ petitions before the High Court of Delhi, the lead of case of which being WPC/175/2021 in the case of **Shaheed Teg Bhadur College of Pharmacy Vs. Pharmacy Council of India.** The High Court of Delhi vide its judgment dated 07.03.2022 allowed all those writ petitions holding that the two resolution/communication dated 17.07.2019 & 09.09.2019 are in excess of the powers conferred upon the PCI under Pharmacy Act and consequently the two resolutions of the PCI were set aside. Earlier also the said two communication of the PCI was under challenge in yet another bunch of writ petitions before the High Court of Karnataka, the lead case of which being **Shifa College of Pharmacy and Others Vs. Pharmacy Council of India and others**. The single Bench of Karnataka

High Court vide its judgment dated 19.11.2020 elaborately dealing on the issue in Paragraph 21 & 22 have held as under :-

> “21. The Apex Court further relied on Halsbury (Vol. 1, 4th Edn. para 33 at page 35) in which it was held that:
>
> "A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interest, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment W.P. No. 52314 OF 2019 W.P.No.52868 OF 2019 grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be implied entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of persons, and such a power may be expressly conferred by statute."
>
> 22. If we look into the above decisions referred and relied upon by the Apex Court in the matter of Shri Rama (AIR 1974 SC 1745) (supra), while considering the fact whether in a particular matter the Government has fettered its discretion while exercising the power under a particular law or not, the Court is required to interpret and decide that how the power vested in the authority has been exercised by taking into consideration the whole background of the Act and purpose behind it and also while exercising the discretion a tribunal must not, by the adoption of a general rule or policy, disable itself from exercising its discretion in individual cases. The rule that it formulates must not be based on considerations extraneous to those contemplated by the enabling act; otherwise it has exercised its discretion invariably by taking irrelevant consideration into account. The authority must not predetermine the issue, as by resolving to refuse all applications or all applications of a certain class or applications except those of a certain class, and then proceeding to refuse an application before it in pursuance of such a decision. There are on the one hand cases where the tribunal in the honest exercise of its discretion W.P. No. 52314 OF 2019 W.P.No.52868 OF 2019 has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, unless there is something exceptional in his case. As Lord Reid observed the general rule is that anyone who has to exercise a statutory discretion must not 'shut (his) ears to the application' (to quote from Bankes, L.J.). As per Halsbury, a public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide

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itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests. "

52. The aforesaid judgment of the Karnataka High Court was further put to test before the Division Bench by way of a Writ Appeal and Division Bench of the Karnataka High Court again after considering the submissions made by the parties dismissed the Writ Appeal preferred by the Pharmacy Council. The Division Bench of the Karnataka High Court in WA 746/2020 decided on 09.11.2021 affirming the order of the Single Bench in paragraph 17 to 27 have held as under :-

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"17. Thus, from perusal of Section 10 & 12 of the Act, it is evident that functions of the PCI have been clearly provided under the Act. The resolution dated 17.07.2019 was passed to put a moratorium on opening of new pharmacy college for running diploma and degree courses in pharmacy for a period of five years beginning from academic year 2020-21. By impugned resolutions, the PCI has suspended the operation of Section 12 of the Act insofar as it pertains to approved courses of study and the examinations for a period of five years. Such a course of action to put a statutory provision into suspension animation for a period of five years by way of executive fiat is not permissible in law.

18. The contention that the resolution has been passed with a view to ensure quality of education is not worthy of acceptance as detailed and exhaustive guidelines have been prescribed by Section 10 of the Act as well as the regulations framed to ensure the quality of education.

19. Even assuming that though PCI may have the power to take a decision, dehors the provisions of the Act and the Education Regulations, the same cannot be sustained as it is violative of principles of audi alteram partem. Any administrative decision has to be taken after giving an opportunity of hearing to the aforesaid persons, in the instant case, admittedly, no such opportunity of hearing was afforded. Therefore, on this ground also the impugned resolution cannot be sustained.

20. In view of our answer to issue Nos.(i) to (iii), it is not necessary for us to answer issue No. (iv), in any case, PCI is an expert body and therefore, its decision will have to be given primacy and cannot be tinkered lightly.

21. A statute is the manifestation of legislative intent. It is the positive declaration of law by the legislative in exercise of legislative functions, as distinguished from executive and judicial functions. The law duly enacted by the legislature in respect of subject matter to which it relates, operates until modified by legislature. The provisions of a statute can be modified or put in suspended animation by the Legislature alone and not by an Executive fiat.

22. It is well settled in law that operation of a statutory provision cannot be restricted by issuing executive instructions and that the executive instructions cannot supplant or supersede the statutory provision. (See: 'STATE OF MAHARASHTRA VS. JAGANNATH ACHYUT KARANDILKAR', MANU/SC/0550/1989 : 1989 SUPP 1 SCC 393: AIR 1989 SC 1133, 'OP LATHER AND Ors. VS. SATISH KUMAR KAKKAR AND ORS' MANU/SC/0073/2001 : (2001) 3 SCC 110 and 'SARVA UTTAR PRADESH GRAMIN BANK AND Ors. VS. MANOJ KUMAR CHAK' MANU/SC/0350/2013 : (2013) 6 SCC 287). In the instant case, the PCI by issuing resolutions which are executive instructions has in fact suspended the operation of Section 12 of the Act. The resolutions are in conflict with Section 12 of the Act. Though the PCI has power to lay down norms of frame regulations, the said power cannot be exercised so as to put a statutory provision in suspended animation or cannot be exercised to arrive at a decision which is in conflict with provisions of the Act. Since the resolutions passed by PCI put a statutory provision i.e., section 12 in a suspended animation, the same is not permissible in law.

23. It is noteworthy to refer to salutary principles with regard to law of precedents. It is well settled in law that a judicial decision is an authority for the proposition it actually decides and not what logically follows from it. [See: 'STATE OF HARYANA VS. RANBIR ALIAS RANA', MANU/SC/1877/2006 : (2006) 5 SCC 167 and 'CHAUHARYA TRIPATHI AND OTHERS VS. LIFE INSURANCE CORPORATION OF INDIA AND OTHERS', MANU/SC/0305/2015 : (2015) 7 SCC 263]. In S.K. TOSHNIWAL supra, special leave petition came before the Supreme Court against orders of various High Courts by which colleges were permitted to continue with increased intake on the basis of permissions/approval obtained by AICTE. The Supreme Court while dealing with aforesaid orders held that provisions of the Act are a complete code in itself and determination of intake capacity to a course is a function of PCI. It was further held that provisions of the Act would prevail over AICTE Act. The aforesaid decision is not an authority for the proposition whether PCI in exercise of its executive powers can suspend section 12 of the Act.

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24. Similarly in JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY supra, the issue which arose for consideration as is evident from para 12 of the Judgment is whether the State Government and the University have the power to frame policy and to refuse the grant of NOC to start a course in Pharmacy in city of Hyderabad and whether decision of the State Government in imposing moratorium is without jurisdiction, irrational or arbitrary. While answering the aforesaid issue, it was held that in the absence of any norms or guidelines to check the mushroom growth of the Institutions, the University cannot be deprived of its power to consider the said aspect and decision of the State Government to impose moratorium cannot be said to be arbitrary of illegal. It was further held that on basis of policy decision of the State Government, the university had taken decision in terms of Section 20 of AICTE Act 1982. The aforesaid decision of the Supreme Court also does not deal with the issue involved in this case; therefore the same is of no assistance to the PCI.

25. For the aforementioned reasons issue No. (i) is answered in the negative by stating that PCI by passing the impugned resolutions could not have taken a decision to bring about a moratorium on opening of new pharmacy colleges for diploma and degree courses for a period of 5 years. The PCI by passing the impugned resolutions has suspended the operation of section 12 of the Act which is not permissible in law. Thus issue (ii) is answered accordingly.

26. In view of our answer to issue No. (i) and (ii) it is not necessary to answer issues (iii) and (iv).

> 27. The contention raised on behalf of PCI that resolution has been passed on approval of the Central Government, as it was informed at every stage and the decision taken by PCI to impose moratorium has been ratified by it, need not be examined as the resolution have not been passed under the provisions of the Act. Similarly the contention with regard to applicability of doctrine of legitimate expectation need not be answered in view of our answer to issues number (i) to (iii)."
>
> In view of preceding analysis, we do not find any ground to differ with the conclusion arrived at by Learned Single Judge. In the result, the appeal fails and is the same is hereby dismissed.

53. For all the aforesaid reasons and the judicial pronouncements referred to in the preceding paragraphs, this Court is of the firm view that two resolutions under challenge in the present writ petition Annexure P-3 and P-4 dated 17.07.2019 and 09.09.2019 are also not sustainable in the eye of law and the same deserves to be and are accordingly quashed/set aside with consequences to follow. The writ petition thus stands allowed. No order as to costs.

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**Sd/-**
**(P. Sam Koshy)**
**Judge**

Ved/Khatai/Sharad/Rohit