

GAHC010211152023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5564/2023

MAHADI ALAM AND 11 ORS
S/O ABUL HASHEN, R/O VILL- DAKHIN KALADUBA, P.O.-JENGONI, DIST-
NAGAON, ASSAM, PIN-782122

2: IFTIKAR HUSSAIN
S/O FAIJUL HAQUE
R/O VILL- KAKATIGAON
P.O.-KAKATIGAON
DIST- NAGAON
ASSAM
PIN-782425

3: ASHADUZ ZAMAN
S/O ABDUL KADIR
R/O VILL-PUB KALADUBA
P.O.-PUB BARALIMARI
DIST-NAGAON
ASSAM
PIN-782124

4: ZAHIRUAL ISLAM
S/O NUR MUHAMMAD
R/O VILL-ROWMARI
P.O.-SOLMARI
DIST-NAGAON
ASSAM
PIN-782002

5: ASIF MAHAMMAD CHOWDHURY
S/O AJIR UDDIN CHOWDHURY
R/O VILL- BALIRAM GAON
P.O.-JAMUNAMUKH
DIST- HOJAI
ASSAM

PIN-782428

6: SALIM UDDIN CHOWDHURY
S/O EBRAHIM ALI CHOWDHURY
R/O VILL-JUGIJAN
P.O.-JUGIJAN BLOCK
DIST-HOJAI
ASSAM
PIN-782428

7: JARIF KHAN
S/O ASHAB ALI KHAN
R/O VILL- DAGAON
P.O.-DAGAON
DIST- NAGAON
ASSAM
PIN-782124

8: ALIZA BEGUM
D/O ISMAIL HUSSAIN
R/O SHANKARDEV ROAD
DHING GATE
P.O.-HAIBORGAON
DIST-NAGAON
ASSAM
PIN-782002

9: IMDADUL ISLAM
S/O KAZIM UDDIN
R/O VILL-SATLUNGA
P.O.-SATLUNGA
DIST-NAGAON
ASSAM
PIN-782426

10: KHAIRUL ISLAM
S/O KAZIM UDDIN
R/O VILL-SATLUNGA
P.O.-SATLUNGA
DIST-NAGAON
ASSAM
PIN-782426

11: RAJESH CHANDRA ROY
S/O SRI RAJKUMAR ROY
R/O VILL- GEJAIPAM
P.O.-GEJAIPAM
DIST- NAGAON

ASSAM
PIN-782002

12: FIRUZUL HAQUE
S/O JALAL UDDIN
R/O VILL-SHILLONGONI
P.O.-SHILLONGONI
DIST-NAGAON
ASSAM
PIN-78200

VERSUS

THE ASSAM PHARMACY COUNCIL AND 6 ORS
A COUNCIL CONSTITUTED UNDER SECTION 19 OF THE PHARMACY ACT,
1948, REPRESENTED BY ITS REGISTRAR-CUM-SECRETARY, HAVING ITS
OFFICE SITUATED IN THE OFFICE OF THE DIRECTOR OF HEALTH
SERVICES, ASSAM, HENGRABARI, GUWAHATI- 781036

2:THE EXECUTIVE COMMITTEE
A COMMITTEE CONSTITUTED UNDER THE SECTION 27 OF THE
PHARMACY ACT
1948 AND REPRESENTED BY THE PRESIDENT HAVING ITS OFFICE AT THE
OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036
DISTRICT- KAMRUP(M)
ASSAM

3:THE REGISTRAR-CUM-SECRETARY
ASSAM PHARMACY COUNCIL
HAVING ITS OFFICE AT OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036

4:THE PRESIDENT
ASSAM PHARMACY COUNCIL
HAVING ITS OFFICE AT OFFICE OF THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036

5:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR
GUWAHATI- 781006

6:THE DIRECTOR
HEALTH SERVICES
HENGRABARI
GUWAHATI- 781036
DISTRICT- KAMRUP(M)
ASSAM

7:THE PHARMACY COUNCIL OF INDIA
REPRESENTED BY ITS REGISTRAR HAVING ITS OFFICE AT NBCC CENTRE
3RD FLOOR
PLOT NO. 2
COMMUNITY CENTRE
MAA ANANDAMAI MARG
OKHLA PHASE-I
NEW DELHI-110020

Advocate for the Petitioner : MR. A C BURAGOHAIN

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 05-12-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. AC Buragohain, learned counsel for the petitioners. Also heard Mr. B Gogoi, learned counsel for the Health Department, Government of Assam including the Assam Pharmacy Council as well as Mr. K Gogoi, learned CGC for the Pharmacy Council of India.

2. The 12 petitioners herein have all acquired the necessary qualifications of Diploma in Pharmacy from Sri Satya Sai Institute of Pharmacy (Polytechnic)

under the Ram Krishna Dharmarth Foundation University of Bhopal, Madhya Pradesh. According to the petitioners having obtained the qualification of Diploma in Pharmacy they have become pharmacist in the State of Assam. Section 31 of the Pharmacy Act 1948 (for short, the Act of 1948) *inter alia* provides that a person who has attained the age of eighteen years and who holds a degree or diploma in pharmacy or pharmaceutical chemistry or a chemist and druggist diploma of an Indian University or a State Government shall be entitled on payment of the prescribed fee as the case may be shall be entitled to have his name entered in the first register. Accordingly the 12 writ petitioners claim a legal right that being above 18 years of age and having obtained the qualification of Diploma in Pharmacy from a recognized Indian University they have a right to have their name registered in the first register maintained by the State Pharmacy Council.

3. The petitioners in this writ petition are aggrieved to the extent that in the State of Assam, the State Pharmacy is not in existence and, therefore, their respective application for registration are now pending for almost 12 months. Section 19 of the Act of 1948, *inter alia*, provides for the constitution and composition of the State Pharmacy Council.

Section 19 is extracted as below:

“19. Constitution and Composition of State Councils.-Except where a Joint State Council is constituted in accordance with an agreement made under section 20, the State Government shall constitute a State Council consisting of the following members. namely:--

(a) six members, elected from amongst themselves by registered pharmacists of the State;

(b) five members, of whom at least 4[three] shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or 5[registered pharmacists], nominated by the State Government;

(c) one member elected from amongst themselves by the members of each Medical Council or the Council of Medical Registration of the State, as the case may be:

(d) the chief administrative medical officer of the State ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;

[(dd) the officer-in-charge of drugs control organisation of the State under the 7[Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;]

(e) the Government Analyst under the I [Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio, or where there is more than one, such one as the State Government may appoint in this behalf:

Provided that where an agreement is made under .clause (b) of sub-section (I) of section 20, the agreement may provide that the State Council to serve the needs of the other participating States also shall be augmented by not more than two members, of whom at least one shall at all times be a person possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or a 2[registered pharmacist], nominated by the Government of each of the said other participating States, and where the agreement so provides, the composition of the State Council shall be deemed to be augmented accordingly."

4. Provisions of Section 19 of the Act of 1948 *inter alia*, provides that the council shall consist of six members, elected from amongst themselves by registered pharmacists of the State; five members, of whom at least three shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or registered pharmacists, nominated by the State Government; one member elected from amongst themselves by the members of

each Medical Council or the Council of Medical Registration of the State, as the case may be; the chief administrative medical officer of the State ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so, the officer-in-charge of drugs control organisation of the State under the Drugs and Cosmetics Act, 1940 to be the ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so; and further *the Government Analyst under the Drugs and Cosmetics Act, 1940 to be the ex officio member subject to the provisions of Section 23 of the Act of 1948.*

5. In the instant case, Mr. B Gogoi, learned counsel for the Health Department as well as the Assam Pharmacy Council states that as because the elections from amongst the registered pharmacist of the State could not be held, therefore, the authorities in the Health Department, Government of Assam are unable to constitute the State Pharmacy Council and as because the State Pharmacy Council could not be constituted, therefore, all such applications by the intending pharmacists to have their names registered in the first register is also remaining pending. It is also stated that the dispute amongst the registered pharmacist have gone to such an extent that because of the mutual disagreement they are unable to hold the election to elect the six members from amongst themselves to be a part of the State Pharmacy Council and in the process more than one year had already gone by.

6. As per the statement of objections and reasons of the Pharmacy Act of 1948, the Central Pharmacy Council as well as the State Pharmacy Council have certain public duties to perform including the responsibility of maintaining the registers of qualified pharmacists as well as have been empowered to prohibit

the dispensing of medicines/drugs under the direct and personal supervision of registered pharmacists. If a pharmacy council cannot be constituted in a State, the public duties entrusted upon the Pharmacy Council would remain unfulfilled, which may in certain circumstances be also against the public interest. As because State Pharmacy Council could not be constituted because of certain disagreement amongst the registered pharmacists for the purpose of being included in the State Pharmacy Council and where such dispute appears to be a prolonged nature of at least for more than a year now, we are of the view that merely because the pharmacists could not agree amongst themselves for election of the six members for the purpose of State Pharmacy Council, it would be against the public interest not to have a State Pharmacy Council in the State of Assam for the other public purposes. Accordingly in the given facts and circumstance of the matter presented before the Court that the registered pharmacists of the State are unable to elect amongst themselves six members for being included in the State Pharmacy Council, we are of the view that public interest requires that on interim State Pharmacy Council be constituted by the State forthwith with the other available members as indicated above. In any view of the matter, as per Section 19 of the Act of 1948, the total number of members of the State Pharmacy Council is fifteen i.e. six elected members from amongst the registered pharmacists and nine as per Section 19 (b)-(e). Even if six members could not be elected and the council is constituted comprising of the other nine members under Section 19(b)-(e), in a council of a total strength of fifteen, the required quorum can still be maintained. Accordingly, we direct the Health Department Government of Assam to immediately constitute an interim State Pharmacy Council with the nine members under Section 19 (b)-(e) so that the different duties and responsibilities of the State Pharmacy Council

can be carried forward and the public interest of the State is not affected in any manner.

7. As regards the other six members to be elected, amongst the registered pharmacist, we leave it open to the registered pharmacists to conduct their election as may be advised and whenever the six members are elected amongst the registered pharmacists, the same may be placed before the State Government authorities and upon doing so, the State Government may reconstitute, the State Pharmacy Council under Section 19 of the Act of 1948.

8. Upon constitution of the interim State Pharmacy Council, the applications of the petitioners may also be given its due consideration and the other duties of the State Pharmacy Council may also be performed by the Council, till such time, the six elected members, amongst the registered pharmacist are brought to the notice of the State Government authorities for reconstitution of the State Pharmacy Council.

9. This writ petition stands allowed as indicated above.

10. It has also been informed that the dispute between the registered pharmacy has been carried forward before this Court in the form of WP(C)No.2196/2023 and because of the pendency of the said writ petition, the election had not taken place. The said aspect would be dealt with separately in WP(C)No.2196/2023.

JUDGE

Comparing Assistant