

GAHC010246052022



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

Case No. : WP(C)/7931/2022

ALIA NURI SULTANA
D/O- AZAHAR ALI, R/O- VILLAGE RAKHYASINI (GARO PARA PART-I), P.O-
RAKHYASINI,
P.S- MORNOL, DIST- GOALPARA, ASSAM, PIN-783101

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, DEPTT. OF HEALTH AND FAMILY WELFARE , DISPUR ,
GUWAHATI-06

2:THE DIRECTOR OF HEALTH SERVICES
(FAMILY WELFARE) SWASTHYA BHAWAN ASSAM
HENGRABARI
GHY
PIN- 791036

3:THE ASSAM PHARMACY COUNCIL
REPRESENTED BY ITS PRESIDENT
DIRECTOR OF HEALTH SERVICES CAMPUS
HENGRABARI
GUWAHATI-781036

4:THE REGISTRAR CUM SECRETARY
ASSAM PHARMACY COUNCIL

AT DIRECTOR OF HEALTH SERVICES CAMPUS
HENGRABARI
GUWAHATI-781036

5:THE ANURAG PHARMACY COLLEGE

REP. BY ITS PRINCIPAL
ANANTHAGIRI (V) AND (M) SURYAPET (DT) TELENGANA STATE PIN-
508206

6:THE PRINCIPAL

ANURAG PHARMACY COLLEGE

ANANTHAGIRI (V) AND (M) SURYAPET (DT) TELENGANA STATE PIN-
508206

7:THE CONTROLLER OF EXAMINATION
THE JAWAHAR LAL NEHRU
TECHNOLOGICAL UNIVERSITY
HYDERABAD
KUKATPALLY
HYDERABAD
PIN-500085
TELENGANA STATE
INDIA

8:THE JAWAHAR LAL NEHRU
TECHNOLOGICAL UNIVERSITY

REP. BY ITS REGISTRAR
HYDERABAD
KUKATPALLY
HYDERABAD
PIN-500085
TELENGANA STATE
INDIA

9:THE PHARMACY COUNCIL OF INDIA
REPRESENTED BY THE REGISTRAR CUM SECRETARY
AT MAA ANANDAMAYEE MARG
OKHLA
PHASE-I
OKHLA INDUSTRIAL ESTATE
NEW DELHI-11004

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 09-06-2023

Heard Mr. M. A. Sheikh, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Health and Family Welfare department appearing for respondent Nos. 1 to 4, Mr. K. Gogoi, and learned CGC appearing for respondent No.9. None appears for Respondent Nos. 5 to 8.

2. Aggrieved by the rejection of the candidature of the petitioner for registration under the Assam Pharmacy Council (“APC” in short), the petitioner has approached this Court under Article 226 of the Constitution of India, praying for a direction to the respondent authority to register the name of the petitioner as Pharmacist under the Assam Pharmacy Council and for setting aside the informal rejection order dated 7.12.2021(Annexure-25).

3. The case of the petitioner, in brief, is that she had obtained her B. Pharma degree from Anurag Pharmacy College under the Jawaharlal Nehru Technological University, Hyderabad by securing Ist Class in the examination held in July, 2021 as it appear from the provisional certificate dated 09.10.2021.

4. The learned counsel for the petitioner has submitted that the APC has to operate within certain set of Rules and that the informal rejection order which was passed on 7.12.2021 does not bear any seal or signature or any serial number and therefore it is stated that the said order was not passed in accordance with law.

5. The learned Counsel for the petitioner has also submitted that it is not in dispute that in the Higher Secondary Examination conducted by the Assam Higher Secondary Education Council, the petitioner could not clear in “Physics” subject and thereafter she had appeared and passed in her betterment examination in “Physics” subject in the Higher Secondary Final Examination, 2020 conducted by the Assam Higher Secondary Education Council. Nonetheless, it is submitted that pending result of the Physics subject in Higher Secondary level, the petitioner was offered admission in the Anurag Pharmacy College, which is affiliated to Jawaharlal Nehru Technological University, Hyderabad and on successfully clearing the B. Pharma course, the writ petitioner had acquired the degree of Bachelor of Pharmacy and as such the petitioner is entitled to be registered as a member of APC.

6. Per contra, the learned CGC submitted that the basic qualification to get admission in B.Pharma course is that the candidate should have passed the Higher Secondary examination successfully with requisite percentage and in absence of the same, the petitioner could not have been provisionally admitted in B.Pharma course. Accordingly it is submitted that there is no irregularity in rejection of the candidature of the petitioner as she had admittedly cleared “Physics” subject in the Higher Secondary examination held in the year, 2020 after she was already admitted in the B. Pharm course in the year 2017.

7. It is submitted that by a letter dated 18.4.2022 the Registrar cum Secretary, APC had written to the Joint Secretary to the Govt of Assam, Health & Family Welfare Department about non acceptance for registration of the petitioner as Pharmacist under Section 32(2) of Pharmacy Act, 1948 in APC. It is submitted that by the said letter the list of the names of candidates whose registration were rejected was also mentioned therein. It is submitted that the degree was obtained in violation of guidelines prescribed by the Pharmacy Council of India in the Education Regulation, 1991 and 2020 for Diploma

in Pharmacy and 2014 Regulation for Bachelor of Pharmacy Course. It is also submitted that under the provision of sub-Section 3 of Section 33 of the Pharmacy Act, 1948, there is a provision for appeal before the State Council within three months from the date of rejection and said remedy has not been availed.

8. Having heard both the sides, the Court finds that the eligibility criteria for admission into B. Pharma Course is that a candidate should have passed class 12 Board Examination with 50% aggregate marks in the Science stream with Physics, Chemistry, Biology /Mathematics. Accordingly, the court is constrained to hold that at the time of admission into the course of Bachelor of Pharmacy, the petitioner did not have the essential eligibility criteria. There is nothing on record to show that the Jawaharlal Nehru Technological University, Hyderabad had permitted the admission of the petitioner provisionally awaiting her successful completion of the Physics paper in Higher Secondary Examination.

9. So far the so called rejection order which has been referred to by the learned counsel for the petitioner, the same is merely a note from the dealing Clerk/ Assistant/ Officer that the petitioner had failed in Physics in 2017 and as such not eligible for registration and that the petitioner had enclosed her mark sheet of her betterment examination wherein she had passed in Physics in 2020, which does not make her eligible for admission into the B. Pharma Course in 2017. This is a mere request to Registrar of Assam Pharmacy Council that authority may reject the application. By no stretch of imagination that the court can accept that the said note is an informal rejection of the candidature. However, the communication dated 18.4.2022 by the Registrar cum Secretary, APC addressed to the Joint Secretary, Govt. Of Assam, Health & Family Welfare Department (Annexure-26 to the writ petition), would constitute formal rejection of the candidature of the petitioner for registration as Pharmacist.

10. Accordingly, this Court does not find this to be a fit case for interference with the rejection of the candidature of the petitioner. Nonetheless as pointed out by the learned CGC under Section 33(3) of the Pharmacy Act, the petitioner would be entitled to make an appeal before the State Pharmacy Council.

11. Under such circumstances, this Court is of the considered opinion that dismissal of the writ petition shall not be a bar to the petitioner to make an appeal before the State Pharmacy Council against the rejection of her candidature for registration as Pharmacist provided under Section 33(3) of the Pharmacy Act, 1948.

12. This writ petition was filed on 06.12.2022 and therefore if the petitioner files any appeal, then the period spent from the said date till the date of passing of this order i.e 06.12.2022 to 09.06.2022 would be considered as the time spent before this court in litigating the matter and the said period is liable to be condoned.

13. Accordingly, liberty is granted to the petitioner to approach the appellate authority. Hence, writ petition stands dismissed.

14. As indicated above, the dismissal of the writ petition shall not prejudice the petitioner, if an appeal is filed by the petitioner before the appellate authority.

JUDGE

Comparing Assistant