

GAHC010263142023



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

Case No. : WP(C)/6947/2023

ASSOCIATION OF ADVANCED PHARMACY PRACTITIONERS (AAPP) AND
ANR
REPRESENTED BY ITS PRESIDENT SRI BIRENDRA KUMAR BARMAN,
HAVING ITS REGISTERED OFFICE AT NO. 1, SAWARNAVILLA, B.R. PATH,
NEAR RISCON ENCLAVE, SAWKUCHI, P.S.-BASISTHA, DIST-KAMRUP (M),
PIN-781001, ASSAM

2: BIRENDRA KUMAR BARMAN
S/O LATE PABINDRA BARMAN
R/O HOUSE NO. 38
F.C. ROAD
UZANBAZAR
GUWHAATI-781001
DIST-KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI-6

2: THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI-36

3: THE ASSAM PHARMACY COUNCIL
REPRESENTED BY ITS PRESIDENT
PHARMACY BHAWAN
DIRECTOR OF HEALTH SERVICE CAMPUS
HENGRABARI
GUWAHATI-36

ASSAM

4:THE REGISTRAR
ASSAM PAHRMACY COUNCIL
DIRECTOR OF HEALTH SERVICE CAMPUS
HENGRABARI
GUWAHATI-36
ASSAM

5:THE PRESIDENT-CUM-RETURNING OFFICER
ASSAM PHARMACY COUNCIL
DIRECTOR OF HEALTH SERVICE CAMPUS
HENGRABARI
GUWAHATI-36
ASSA

Advocate for the Petitioner : MR. A J DAS

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C)/2196/2023

ASSAM REGISTERED PHARMACIST UNION AND ANR
REP. BY ITS GEN. SECY. DIGANTA CHOUDHURY
HAVING ITS REGD OFFICE AT PANJABARI
GUWAHATI
KAMRUP ASSAM

2: SRI DIGANTA CHAKRABARTY
GS OF ARPU

S/O- DULAL CHAKRABARTY

R/O- PANJABARI
BAGHORBORI
GUWAHATI-37

3: IKBAL HUSSAIN
CHIEF ORGANISING SECY. OF ARPU

S/O- RAFIQUUL ISLAM

R/O- VILLAGE -

JARAMARI
BALISATRA
DHING
NAGAON-782122
ASSAM
VERSUS

THE STATE OF ASSAM AND 5 ORS
PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI-06

2:THE DIRECTOR OF HEALTH SERVICES
HENDERABARI
GUWAHATI-36

3:THE ASSAM PHARMACY COUNCIL
REP. BY ITS PRESIDENT
PHARMACY BHAWAN
DIRECTOR OF HEALTH SERVICE CAMPUS
HENDERABARI
GUWAHATI-36
ASSAM

4:THE REGISTRAR
ASSAM PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENDERABARI
GUWAHATI-36
5:THE PRESIDENT CUM RETURNING OFFICER
ASSAM PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENDERABARI
GUWAHATI-36

6:SRI MUNINDRA CHANDRA DEKA
PRESIDENT CUM REGISTRAR
ASSAM
PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENDERABARI
GUWAHATI-36
ASSAM

Advocate for : MR. U K NAIR
Advocate for : SC
HEALTH appearing for THE STATE OF ASSAM AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

19.12.2023

Heard Mr. P.J. Saikia, learned senior counsel assisted by Mr. K.J. Saikia, learned counsel for the petitioners in W.P.[C] no. 2196/2023; Mr. A.J. Das, learned counsel for the petitioners in W.P. [C] no. 6947/2023; Mr. B. Gogoi, learned Standing Counsel, Health & Family Welfare Department for the State respondent nos. 1 – 4 in both the writ petitions; and Mr. B.D. Das, learned senior counsel assisted by Mr. H.R. Das, learned counsel for the respondent no. 5 in W.P.[C] no. 2196/2023 and the respondent nos. 5 & 6 in W.P.[C] no. 6947/2023.

2. In both the writ petitions, the petitioners have challenged a Notification dated 10.02.2023 issued under the hand of the President-cum-Returning Officer, Assam Pharmacy Council and published in the Assam Gazette, in its issue dated 13.02.2023. As per the said Notification, the said election was contemplated to be conducted using digital mode of system [on-line voting system].

3. The prime ground of challenge in both the writ petitions is that there is a set of rules viz. 'Rules for Election of Members including the President and the Vice-President of the Assam Pharmacy Council and all the Members of the Executive Committee of the said Council', which have not contemplated any election by digital mode [on-line voting system] and as such, the decision to conduct the election without amendment in the said rules is not permissible, being contrary to the said rules.

4. Mr. Gogoi, learned Standing Counsel, Health & Family Welfare Department has placed a letter bearing no. E 295996/73 dated 27.10.2023 of the Health & Family Welfare Department, Government of Assam, by which the approval earlier granted by the State Government to the Assam Pharmacy Council's proposal dated 08.02.2023 to conduct election to the Assam Pharmacy Council through digital mode [on-line voting system] has been withdrawn.

5. Mr. Das, learned senior counsel appearing for the respondent President-cum-Returning Officer, Assam Pharmacy Council has submitted that the election to the 6 [six] nos. of members to the Assam Pharmacy Council under Section 19[a] of the Pharmacy Act, 1948 is going to be conducted through paper ballot system within 3 [three] months in conformity with the extant rules.

6. With the above submissions, the learned counsel for the parties have conjointly submitted that since the election for the 6 [six] nos. of members are going to be conducted through paper ballot system and earlier approval granted for holding election through digital mode [on-line voting system] has since been withdrawn, there is no surviving cause of action to maintain the two writ petitions.

7. In view of the above the submissions and the broad consensus arrived at the Bar, the two writ petitions are closed, reserving the liberty to the parties to avail appropriate remedy in the event of any subsequent cause of action.

8. The documents including the letter bearing no. E 295996/73 dated 27.10.2023 of the Health & Family Welfare Department, Government of Assam, placed by Mr. Gogoi, learned Standing Counsel, Health & Family Welfare Department, are marked as 'X' and kept as part of the case records.

JUDGE

Comparing Assistant