

GAHC010174852023



2024:GAU-AS:12804

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

Case No. : WP(C)/4543/2023

SUBIMAL SAHA
PHARMACIST REGD, NO-8157,
S/O- LATE NARAYAN CHANDRA SAHA,
WARD NO-5, P.O- BARPETA ROAD, DIST- BARPETA, PIN-781315, ASSAM

2: SANKAR NATH
PHARMACIST REGD
NO-10939

S/O- LATE MAHADEV NATH

KALAHABHANGA WARD NO-3
BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

3: SHAYMAL KANTI SAHA
PHARMACIST REGD
NO-9135

S/O- LATE KURAN CHANDRA SAHA

KRISHNA NAGAR
P.O- BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

4: RAKESH SAHA
PHARMACIST REGD
NO-10692

S/O- AMIYA BHUSHAN SAHA

P.O- BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

5: SUDIP SAHA
PHARMACIST REGD
NO-9792
S/O- SUBIMAL SAHA

WARD NO-5
P.O- BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

6: SUBODH CHANDRA ROY
PHARMACIST REGD
NO-5953

S/O- SATISH CH. ROY
HOWLY

DIST- BARPETA
PIN-781316
ASSAM

7: SUBHASH CHANDRA DAS
PHARMACIST REGD
NO-7586

S/O- LATE SASHI BHUSHAN DAS

BARPETA TOWN
B.K ROAD (AMOLAPATTY)
DIST- BARPETA
PIN-781301
ASSAM

8: MONGAL SAHA
PHARMACIST REGD
NO-10059

S/O- LATE GUPESWAR SAHA

WARD NO-10
P.O- BARPETA ROAD

DIST- BARPETA
PIN-781315
ASSAM

9: SWAPAN KUMAR SAHA
PHARMACIST REGD
NO-7726

S/O- LATE SURENDRA MOHAN SAHA

C/O- MONOSA PHARMACY

P.O- BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

10: PRADIP KUMAR SAHA
PHARMACIST REGD
NO- 9953

S/O- LATE NARAYAN CHANDRA SAHA

WARD NO-5
P.O- BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

11: SUBASH MODAK
PHARMACIST REGD
NO-9346

S/O- LATE MONINDRA MADAK
SHAMA PALLY

BARPETA ROAD
DIST- BARPETA
PIN-781315
ASSAM

12: BULU SAHA
PHARMACIST REGD
NO-9955

S/O- LATE SURENDRA MOHAN SAHA

BARPETA ROAD

DIST- BARPETA
PIN-781315
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HEALTH AND FAMILY WELFARE (B)
DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF HEALTH SERVICES
OFFICE AT PHARMACY BHAWAN

HENGRABARI GUWAHATI- 781036
ASSAM

3:THE ASSAM PHARMACY COUNCIL
OFFICE SITUATED IN THE OFFICE OF THE DIRECTOR OF HEALTH
SERVICES CAMPUS
PHARMACY BHAWAN
HENGRABARI
GUWAHATI-781036
DIST- KAMRUP (M)
ASSAM

4:THE EXECUTIVE COMMITTEE
ASSAM PHARMACY COUNCIL

REP. BY THE PRESIDENT

HAVING ITS OFFICE AT DIRECTOR OF HEALTH SERVICES CAMPUS
PHARMACY BHAWAN
HENGRABARI
GUWAHATI-781036
DIST- KAMRUP (M)
ASSAM

5:THE REGISTRAR CUM SECRETARY
ASSAM PHARMACY COUNCIL

PHARMACY BHAWAN
HENGRABARI
GUWAHATI-781036
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A DAS, MR. P SENGUPTA,MR. N I KHAN,MR S KHOUND

Advocate for the Respondent : SC, HEALTH,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

17.12.2024

Heard Mr. A Das, learned counsel for the petitioners, who submits that the petitioners are aggrieved by the cancellation notices made under Section 36(1) (i) of the Pharmacy Act, 1948 (hereinafter referred to as the '1948 Act').

2. The petitioners grievance is that prior to the cancellation of their pharmacist licences, they have not been furnished with the Executive Committee Resolution (6) dated 17.08.2022 and the Confirmation made by the State Council under Section 36(3) of the 1948 Act, which was the basis for cancelling the licences of the petitioners.

3. The petitioners' counsel submits that due to the above, the petitioners have not been able to prefer an appeal in terms of Section 36 of the 1948 Act. He prays that a direction may be issued to the respondents, to furnish to the petitioners the Executive Committee Resolution (6) dated 17.08.2022 and the Confirmation made by the State Council under Section 36(3) of the 1948 Act. He also submits that similar cases have been disposed of by this Court, one of being WP(C) 1543/2024. He accordingly prays that the present writ petition may be disposed of, in terms of the order dated 18.03.2024 passed in WP(C) 1543/2024.

4. Mr. B. Gogoi, learned counsel for the Assam Pharmacy Council submits that

the Executive Committee Resolution (6) and the Confirmation made by the State Council would be provided to the petitioners, within a period of 2 (two) weeks from the date of receiving the certified copy of this order.

5. I have heard the learned counsels for the parties.

6. On perusing the order dated 18.03.2024 passed in WP(C) 1543/2024, this Court finds that the present case is a covered matter and can be disposed of, in terms of the order dated 18.03.2024 passed in WP(C) 1543/2024.

7. Paragraph 7 and 8 of the order dated 18.03.2024 passed in WP(C) 1543/2024 is reproduced hereinbelow, as follows :

“7. Accordingly, this Court is of the view that in terms of the order dated 24.11.2023, passed in W.A. No. 431/2023, the petitioners should be allowed to file an appeal as and when they are given a copy of the Executive Committee Resolution and the confirmation of the same by the State Council.

8. As an alternative remedy of appeal under Section 36(4) of the Act, 1948 is available and in the meantime, the Hon'ble Division Bench in a similar circumstance has relegated the similarly situated petitioners to approach the appellate authority, this writ petition stands disposed of with the following directions:

I. The petitioners within a period of ten days from today shall submit a copy of the order passed by this Court today along with a copy of the writ petition to the respondent No.1.

II. The respondent No. 1 within a period of two weeks thereafter shall provide a copy of the Executive Committee Resolution to the petitioners, whereby the decision to remove the name of the petitioners from the roll of the

council was taken and a copy of the decision/confirmation made by the State Council.

III. Thereafter, on receipt of the copies of the resolution made by the Executive Committee and the confirmation made by the State Council, the petitioners shall be at liberty to approach the Appellate Authority within the prescribed period of time under Section 36(4) of the Act, 1948.

IV. Till the Resolution of the Executive Committee and confirmation by the State Council is provided to the petitioners, the orders of cancellation of licences of the petitioners shall remain suspended. The above is also subject to the condition that the petitioners should approach the respondent No.1 for furnishing copies of the Resolution of the Executive Committee and confirmation made by the State Council, within a period of 10(ten) days from today."

8. On considering the submissions made by the counsels for the parties and the order dated 18.03.2024 passed in WP(C) 1543/2024, this writ petition is disposed of with a direction to the respondents to provide to the petitioners, the Executive Committee Resolution (6) and the Confirmation made by the State Council, within two weeks, from the date of receipt of a certified copy of this order along with the copy of the writ petition.

9. Till the Resolution (6) of the Executive Committee and the Confirmation made by the State Council is provided to the petitioners, the orders of cancellation of the licences of the petitioners shall remain suspended. The above is however subject to the condition that the petitioners approach the respondents with the certified copy of this order along with the copy of the writ petition, within 10 (ten) days from today.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant