

GAHC010065612024



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

Case No. : WP(C)/5276/2023

DR. BICHITRA KUMAR DOLEY
S/O- LATE PADMESHWAR DOLEY

R/O- DUARACHUK
KUMARONI CHIGA

NEAR DIBRUGARH UNIVERSITY

P.O. AND P.S.- RAJABHETA

DISTRICT- DIBRUGARH
ASSAM

PIN- 786008.

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM

HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPTT.

DISPUR
GUWAHATI.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
MEDICAL EDUCATION AND RESEARCH DEPARTMENT

DISPUR
GHY-06.
4:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GHY-06.
5:THE DIRECTOR OF MEDICAL EDUCATION ASSAM
6TH MILE
KHANAPARA

GUWAHATI- 22.
6:SUDIR CHANDRA SAHA
PHARMACIST
ASSAM BIDHAN SABHA SWAYSTHA KENDRA

DISPUR
GUWAHATI-6.
7:THE REGISTRAR CUM SECRETARY
PHARMACY COUNCIL OF INDIA
NBCC CENTRE
3RD FLOOR
PLOT NO. 2
COMMUNITY CENTRE
MAA ANANDOMOI MARG

OKHLA PHASE-1
LANDMARI (NEAR HOTEL CROWN PLAZA)

NEW DELHI- 20.

For the Petitioner(s)	: Mr. B. D. Das, Sr. Advocate
	: Mr. B. Das, Advocate
For the Respondent(s)	: Mr. D. P. Borah, Standing Counsel
	: Mr. G. Rahul, Advocate

Date of Hearing	: 25.07.2024
Date of Judgment	: 25.07.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. D. Das, the learned Senior counsel assisted by Mr. B. Das, the learned counsel appearing on behalf of the Petitioner. I have also heard Mr. D. P. Borah, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2, 3, 4 & 5 and Mr. G. Rahul, the learned counsel appearing on behalf of the Respondent No.6.

2. The dispute in the instant proceedings arises as to which of the Departments i.e. Health and Family Welfare Department or the Medical Education and Research Department which are under the Health Department of the Government of Assam has a right to nominate a member to the Pharmacy Council of India under Section 3(h) of the Pharmacy Act, 1948.

3. For deciding the said issue, this Court finds it relevant to take note of the Pharmacy Act, 1948 (for short "the Act of 1948"). The Preamble to the said Act stipulates that the said Act was enacted to regulate the profession and practice of Pharmacy and for that purpose to constitute Pharmacy Councils. Section 2(c) defines the term "Central Council" to mean the Pharmacy Council of India constituted under Section 3 of the Act of 1948. For the purpose of the instant writ petition, the said Section 3 of the Act of 1948 is very pertinent.

4. A reading of Section 3 shows as to how the Central Council would be constituted and what would be its composition. For the purpose of the instant dispute, Section 3(h) is relevant inasmuch as one member is to be nominated by the State Government of each State who has to be a

registered pharmacist. There is no quarrel with the facts that both the Petitioner and the private Respondent are registered pharmacist. In the backdrop of the above, let this Court take note of the facts of the instant case.

5. One Smti. Sukriti Das was a member of the Pharmacy Council of India who was representing the State of Assam. Her term was to end in the month of August, 2023. The Petitioner being interested to be nominated as a Member of the Central Council submitted an application on 03.05.2023 before the Respondent No.5 for consideration and recommendation of his candidature for being the member of Pharmacy Council of India as a nominee of the State of Assam. While the said application was pending, the Pharmacy Council of India had also intimated the State of Assam that the term of the member namely Smti. Sukriti Das was to expire on 08.08.2023 and sought the nomination from the Government of Assam.

6. Pursuant thereto, on 12.07.2023, the Joint Secretary to the Government of Assam, Medical Education and Research Department submitted the names of three applicants which included the name of the Petitioner. Thereafter, a Screening Committee of five members was constituted by the Director of Medical Education to verify the eligibility of the faculty members for membership nomination to the Pharmacy Council of India for the State Government. The Screening Committee in its meeting held on 01.08.2023 after considering all the faculty members (candidates) recommended the name of the Petitioner to be nominated as a member to the Pharmacy Council of India from the Government of Assam. The Director of Medical Education, Assam thereupon vide a communication dated

02.08.2023 forwarded the recommendation of the Petitioner as a member of the Pharmacy Council of India to the Joint Secretary to the Government of Assam, Medical Education and Research Department.

7. Subsequent thereto, vide another communication dated 08.08.2023, the Respondent No.3 who is the Joint Secretary of the Medical Education and Research Department informed the Respondent No.7 that the Government of Assam in the Medical Education and Research Department has nominated the Petitioner as a State Government nominee to the Central Council of the Pharmacy Council of India under Section 3(h) of the Act of 1948. However, it has been stated in the writ petition that to the utter shock and surprise of the Petitioner, the Joint Secretary to the Health and Family Welfare Department to the Government of Assam informed the Registrar-cum-Secretary, Pharmacy Council of India vide a communication dated 29.08.2023 that the Respondent No.6 was nominated and the recommendations so made in favour of the Petitioner vide the communication dated 08.08.2023 was withdrawn. It is under such circumstances, the Petitioner has approached this Court challenging that the Health and Family Welfare of the Government of Assam has no jurisdiction to make the nomination and it is only the Medical Research and Education Wing of the Health Department of the Government of Assam who has the authority to make the nomination.

8. The instant writ petition upon being filed was listed before this Court on 13.09.2023 and this Court taking into account the contentions so raised in the writ petition and the issue involved, directed the Principal Secretary to the Government of Assam, Health and Family Welfare Department to keep

the nomination of both the Petitioner and the Respondent No.6 in abeyance to the Pharmacy Council till the next returnable date. The interim order thereupon has been extended from time to time. The Respondent No.6 had filed an application for vacating of the said interim order which was registered and numbered as I.A.(Civil) No.993/2024. The said application came up for consideration before this Court today but taking into account that any decision on the said application would impact on the merit of the case, this Court with due consent of both the parties have taken up the instant writ petition for disposal at this stage.

9. This Court further takes note of that only the Respondent No.4 had filed an affidavit-in-opposition who is the Joint Secretary to the Government of Assam, Health and Family Welfare Department. The Medical Education and Research Wing of the Health Department of the Government of Assam though impleaded in the instant proceedings has not submitted any affidavit-in-opposition or has challenged the cancellation of the nomination of the Petitioner vide the communication dated 29.08.2023. The affidavit filed by the Respondent No.4 though states various details as regards the bifurcation and had supported the impugned communication dated 29.08.2023, this Court would deal with the contents of the affidavit while dealing with the contentions so made by the learned counsel for the parties in the later stage of the instant judgment.

10. To the said affidavit-in-opposition, an affidavit-in-reply has been filed by the petitioner reiterating its stand in the writ petition. It is also seen that to the application filed seeking modification/alteration/vacation of the interim order dated 13.09.2023, an objection has been filed by the Petitioner

whereby the Assam Rules of Executive Business, 2023 was also brought into the picture to show as to how the tussle between two Departments is required to be resolved. In the backdrop of the above, let this Court therefore take note of the respective contentions of the learned counsels for the parties.

11. Mr. B. D. Das, the learned Senior counsel for the Petitioner submitted by drawing the reference to the notification dated 05.05.2022 that the Governor of Assam had bifurcated the Health and Family Welfare Department of the Government of Assam into two separate Departments. One is the Health and Family Welfare Department and the other is Medical Education and Research Department. He submitted that a perusal of the said notification dated 05.05.2022 would show that each of the Departments have been conferred administrative control upon certain Directorates, Offices etc. Referring to Clause-1, the learned Senior counsel submitted that the administrative control of the Health and Family Welfare Department only encompasses various directorates, missions etc. which are encompassed in Sub-Clauses (i) to (vii) of Clause-1 of the said notification. The learned Senior counsel further submitted that in respect to the Medical Education and Research Department, the administrative control is in respect to those Directorates etc. which are mentioned in Sub-Clauses (i) to (ix) of Clause-2. He submitted that Sub-clause (ii) of the Clause-2 of the said notification categorically shows that pharmacy institutes comes under the Directorate of Medical Education is under the administrative control of the Medical Education and Research Department. He therefore submits that the Health and Family Welfare Department of the Government of Assam could not have made the recommendations in favour of the Respondent No.6 and also could

not have interfered with the recommendation dated 08.08.2023 made in favour of the Petitioner.

12. The learned Senior counsel has further drawn the attention of this Court to the Assam Rules of Executive Business, 2023 and more particularly to Rule 25, 28(2) and 41 and submitted that when there is question for ascertaining of a case in between the Departments and there being no clear specifications, the matter ought to be referred to the Chief Secretary who shall if necessary, obtain the order of the Chief Minister. He further submitted that the Chief Secretary being the Head of the Administrative Machinery in the State and being responsible to ensure efficiency of functioning of the entire State Administration, his mediation shall be sought as far as practicable in all cases where there is a difference of opinion between two secretaries. He further submitted that if there is a difference between the two Departments, then in that regard, the matter should be referred to the Chief Secretary for a decision which shall be final and binding. In that regard, the learned Senior counsel also drew the attention of this Court to the affidavit filed by the Respondent No.4 and submitted that the Respondent No.4 in its affidavit has also mentioned that there is lack of clarity as to which of the two bifurcated Departments would deal with the matters pertaining to the Pharmacy Act, PCI and APC and as such the matter ought to have been referred to the Chief Secretary rather than a decision being taken by the Health and Family Welfare Department unilaterally.

13. Per contra, Mr. D. P. Borah, the learned Standing counsel for the Respondent Nos. 1 to 5 submitted that he appears for both the bifurcated Departments of the Health Department of the Government of Assam. He

specifically submitted that the Medical Education and Research Department of the Government of Assam which department he also represents do not challenge the impugned communication dated 29.08.2023 and duly accepts that it is only the Health and Family Welfare Department of the Government of Assam which have the authority to make the nomination. He further submitted that the impugned communication dated 29.08.2023 have been issued by the Health and Family Welfare Department, Government of Assam with the due concurrence of the Minister of both the Health and Family Welfare Department and Medical Education and Research Department of the Government of Assam which is apparent from a perusal of the impugned communication itself. The learned Standing counsel further submitted that the question of the Assam Rules of Executive Business, 2023 to be made applicable would have arisen if there is a Departmental tussle as regards any subject. In the instant case, as the Medical Education and Research Department of the Government of Assam duly accepts the nomination so made by the Health and Family Welfare Department vide the impugned communication, the question of making a reference to the Chief Secretary as stipulated in the Assam Rules of Executive Business, 2023 does not apply.

14. The learned counsel further drawing the attention of this Court to the affidavit so filed by the Respondent No.4 submitted that what are the roles of the Health and Family Welfare Department and Medical Education and Research Department of the Government of Assam in activities of the PCI specifically mentioned in the affidavit. He submitted that the Act of 1948 regulates two aspects,

(a) Pharmacy education for the purpose of registration as pharmacist by

framing Education Regulations; and

(b) Practice of profession of pharmacy in the country through the State Pharmacy Councils.

He submitted that the first aspect i.e. Pharmacy education for the purpose of registration as pharmacist by framing education regulations falls under the ambit of the Medical Education and Research Department. However as regards the practice of profession of pharmacy in the country through the State Pharmacy Council which is specifically mentioned in (b) comes under the Health and Family Welfare Department. He further submitted that the matter of making nomination to the PCI is purely an administrative decision and it cannot be attributed to one department alone. Drawing the reference to the Act of 1948 and the affidavit so filed by the Respondent No.4, the learned Standing counsel for the official respondents submitted that for education regulations, there is a separate sub-committee namely the Education Regulation Committee under the Central Council. He further submitted that there is no laid down guidelines by the Pharmacy Council of India which indicate that the Pharmacy Council of India nominee of the State Government who is a member of the Central Council is only involved in making policy decisions for regulations of pharmacy education. He further submitted that from a perusal of the notification dated 05.05.2022, it would be seen that the matters relating to pharmacy institutes were under the domain of the Medical Education and Research Department but the said notification have not explicitly detailed as to which department shall deals with the matters pertaining to Pharmacy Act, Pharmacy Council of India and Assam Pharmacy Council. He submitted that matters like election

of Assam Pharmacy council, payment of fees by the Assam Pharmacy Council to the Pharmacy Council of India, cases of fake registration of pharmacist etc. are being dealt with by the Health and Family Welfare Department.

15. Drawing reference to Annexure-8 to the affidavit-in-opposition filed by the Respondent No.4, the learned counsel for the official respondents also submitted that the Respondent No.6 has the due qualification. He further submitted that there is no hard and fast Rule for making the nomination in terms with Section 3(h) of the Act of 1948 and it being a discretionary power of the Government of Assam, only what is required to be done is a fair and transparent mode is being adopted.

16. Mr. G. Rahul, the learned counsel appearing on behalf of the Respondent No.6 submitted that he adopts the arguments made by Mr. D. P. Borah, the learned Standing counsel appearing on behalf of the official respondents. He further submitted that the Respondent No.6 is duly qualified to be nominated in terms with Section 3(h) of the Act of 1948.

17. I have heard the learned counsels for the parties and have given anxious consideration to their respective submissions.

18. From a perusal of the notification dated 05.05.2022, it reveals that the Governor of Assam had bifurcated the Health and Family Welfare Department into two Departments. One is the Health and Family Welfare Department and the other is the Medical Education and Research Department. The said notification also shows the respective administrative powers being entrusted to each of the Departments. This Court further takes

note of that both the Health and Family Welfare Department as well as Medical Education and Research Department of the Government of Assam have been arrayed as Respondents. However, there is only one counsel representing all the official respondents. The Medical Education and Research Department has not come with the stand that it has the administrative control in respect to the nomination in terms with Section 3(h) of the Act of 1948. The submission made by Mr. B. D. Das, the learned Senior counsel as regards Rule 25, 28 and 41 of the Assam Rules of Executive Business, 2023 though at the first blush seems attractive but the application of those Rules can only be made if there would have been any dispute or a challenge made to the impugned communication dated 29.08.2023 by the Medical Education and Research Department of the Government of Assam. Under such circumstances, if there is no dispute between the two departments and the Medical Education and Research Department have been accepted the communication dated 29.08.2023, the question of involving the Chief Secretary or even the Chief Minister in the case do not arise.

19. This Court also has taken note of that the impugned communication dated 29.08.2023 whereby the Respondent No.6's name was nominated and the nomination made in favour of the Petitioner vide 08.08.2023 was withdrawn had not only the concurrence of the Health and Family Welfare Department of the Government of Assam but also Minister of both the Departments i.e. the Health and Family Welfare Department as well as Medical Education and Research Department. Under such circumstances, in the opinion of this Court, the question of interfering with the impugned nomination so made in favour of the Respondent No.6 by the Health and

Family Welfare Department of the Government of Assam vide the impugned communication does not arise.

20. This Court also finds it very pertinent to mention that the said decision so taken vide the impugned communication dated 29.08.2023 is a purely administrative decision. The power of judicial review in such aspects is very limited. This Court also taken into account that there being no case of mala fide, arbitrariness as well as unreasonableness being shown as regards the issuance of the impugned communication, the question of interference does not arise.

21. Under such circumstances, the instant petition stands dismissed.

22. Interim order passed on 13.09.2023 stands vacated.

JUDGE

Comparing Assistant