

GAHC010198072017



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

Case No. : WP(C) 3822/2017

1:SAMSUL HAQUE and ANR
S/O. LT. SAHED ALI, R/O. M.B. ROAD, NAGAON, DIST. NAGAON, ASSAM.

2: ABU TALAB HABIBUR RAHMAN

S/O. LT. ATAUR RAHMAN
R/O. VILL. CHWKITOP
DIST. NAGAON
ASSAM

VERSUS

1:THE STATE OF ASSAM and ANR
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, HEALTH and
FAMILY WELFARE DEPTT., DISPUR, GUWAHATI-6.

2:THE ASSAM PHARMACY COUNCIL
REP. BY THE REGISTRAR-CUM-SECY.
ASSAM PHARMACY COUNCIL
HENGRABARI
GUWAHATI-36

Advocate for the Petitioner : MR.P TALUKDAR

Advocate for the Respondent : SC, HEALTH

Linked Case : WP(C) 2284/2015

1:ASSAM DRUG DEALER ASSOCIATION and 8 ORS

HAVING ITS REGD. OFFICE AT 4TH FLOOR
CITY TOWER
S.C. GOSWAMI ROAD
PANBAZAR
GHY-1
REP. BY ITS GENERAL SECY. SRI BIKRAM N. CHOUDHURY

2: BIRESH MALLA BARUAH
RAJNAGAR
NALBARI

3: SAINATH SARMA
BARAMA
BASKA

4: BINOY CHAKRAVARTY
BONGAON
NALBARI

5: DEVARAJ BISWAS
H.S. ROAD
DIBRUGARH

6: KAUSHIK BARUAH
AMALAPATTY
DIBRUGARH

7: PUNDEO KUMAR SAHA
GRAHAM BAZAR
DIBRUGARH

8: MANIR UDDIN AHMED
HOWLY
BARPETA

9: SHAHIDUL ISLAM
HOWLY
BARPETA
VERSUS

1: THE STATE OF ASSAM AND 5 ORS
REP. BY ITS COMMISSIONER and SECY.
DEPTT OF HEALTH AND F.W.
DISPUR
GHY-6

2: THE PRINCIPAL SECY.
DEPTT. OF HEALTH AND F.W.

DISPUR
GHY-6

3:ASSAM PHARMACY COUNCIL
REP. BY ITS REGISTRAR CUM SECY.
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-36

4:THE JT. DRUGS CONTROLLER CUM REGISTRAR
ASSAM PHARMACY COUNCIL
C/O DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-36

5:REGISTRAR CUM SECY.
ASSAM PHARMACY COUNCIL
O/O DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-36

6:PRESIDENT
ASSAM PHARMACY COUNCIL
O/O DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY-36

Advocate for the Petitioner : MR.D DAS
Advocate for the Respondent : SC
HEALTH and F W

Linked Case : WP(C) 3673/2012

1:SANKAR DAS
S/O- SRI BHAGIRATH DAS
R/O VILL.- PANIPARA
P.O. and P.S.- HAJO
DIST.- KAMRUP M
ASSAM.

VERSUS

1:THE STATE OF ASSAM AND ORS
THROUGH THE COMMISSIONER -SECY.
DEPTT. OF HEALTH and FAMILY WELFARE
DISPUR
GHY- 6.

2:THE ASSAM PHARMACY COUNCIL
TO BE REP. BY THE PRESIDENT/CHAIRMAN
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GHY- 36.

3:THE DY. DRUGS CONTROLLER-CUM-THE REGISTRAR
ASSAM PHARMACY COUNCIL
O/O THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABRI
GHY- 36.

Advocate for the Petitioner : MR.D SARMAH
Advocate for the Respondent : SC
HEALTH

Linked Case : WP(C) 6614/2014

1:MD. ALTAF AHMED
S/O- MD. ABDUL KARIM
R/O- ARIFULLAH ROAD
WARD NO. 4
DHUBRI TOWN
P.O.
P.S. and DIST.- DHUBRI
ASSAM
PIN- 783301.

VERSUS

1:THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HEALTH AND FAMILY WELFARE
DISPUR
GHY- 6.

2:THE DIRECTOR OF HEALTH SERVICES
GOVT. OF ASSAM
HENGRABARI
GHY- 36.

3:THE DY. DRUG CONTROLLER AND LICENSING AUTHORITY
DRUG CONTROL ADMINISTRATION
ASSAM
HENGRABARI
GHY- 36.

4:THE JOINT DRUGS CONTROLLER HQ CUM REGISTRAR
ASSAM PHARMACY COUNCIL
HENGRABARI
GHY- 36.

5:THE SENIOR INSPECTOR OF DRUGS
DHUBRI
DIST.- DHUBRI
ASSAM.

Advocate for the Petitioner : MS.M ACHARYYA
Advocate for the Respondent : MR.J M A CHOUDHURY

Linked Case : WP(C) 3438/2015

1:PHARMACIST FORUM OF ASSAM and 3 ORS
AN ASSOCIATION REGISTERED UNDER THE PROVISIONSOF THE
SOCIETIES REGISTRATION ACT
1860 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT DR. R.P. ROAD
DISPUR
GUWAHATI- 781006
IN THE DISTRICT OF KAMRUP METRO
ASSAM
REP.BY ITS SECRETARY
SHRI JITU MANI BARMAN
RESIDENT OF BANI NAGAR
REHABARI
GUWAHATI- 781008
IN THE DIS.TOF KAMRUP METRO
ASSAM.

2: SHRI BIREN KUMAR SARMA
S/OLT. DHIRESWAR SARMA R/O WARD NO. 7
NEAR BSNL OFFICE
NALBARI- 781335

IN THE DIST.OF NALBARI
ASSAM.

3: SRI ANUPAM KAR PURKAYASTHA
S/O ARABINDA KAR PURKAYASTHA R/O SONAI ROAD
SILCHAR- 788009
IN THE DIST. OF CACHAR
ASSAM.

4: SHRI ASHUTOSH DEBNATH
SON OF LT. RAMESH CHANDRA DEBNATH R/O WARD NO. 5
DHINGBAZAR
P.O. and P.S. DHING-782123
IN THE DIST. OF NAGAON
ASSAM.
VERSUS

1:THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE ASSAM PHARMACY COUNCIL
A COUNCIL CONSTITUTED UNDER THE PROVISIONS OF SECTION 19 OF
THE PHARMACY ACT
1948 AND HAVING ITS OFFICE SITUATED IN THE OFFICE OF THE
DIRECTOR OF HEALTH SERVICE
ASSAM
HENGRABARI
GUWAHATI- 781036
IN THE DIST. OF KAMRUP METRO
ASSAM.

3:THE EXECUTIVE COMMITTEE
A COMMITTEE CONSITUTED UNDER SECTION 27 OF THE PHARMACY ACT
1948 AND REP. BY THE PRESIDENT
HAVING ITS OFFICE AT THE OFFICE OF THE DIRECTOR OF HEALTH
SERVICE
ASSAM
HENGRABARI
GUWAHATI- 781036
IN THE DIST.OF KAMRUP METRO
ASSAM.

4:THE REGISTRAR
ASSAM PHARMACY COUNCIL
HENGRABARI

GUWAHATI- 781036
IN THE DIST.OF KAMRUP METRO
ASSAM.

5:THE DIRECTOR
HEALTH SERVICES
ASSAM HENGRABARI
GUWAHATI- 781036
IN THE DIST.OF KAMRUP METRO
ASSAM.

6:THE DRUGS CONTROLLER
ASSAM
HENGRABARI
GUWAHATI- 781036
IN THE DIST. OF KAMRUP METRO
ASSAM.

Advocate for the Petitioner : MR.S SARMA
Advocate for the Respondent : MR.J M A CHOUDHURY

Linked Case : WP(C) 1744/2015

1:PHARMACIST FORUM OF ASSAM and ANR
AN ASSOCIATION REGISTERED UNDER THE PROVISIONS OF THE
SOCIETIES REGISTRATION ACT
1860 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT DR. R.P. ROAD
DISPUR
GUWAHATI- 781006
IN THE DIST.OF KAMRUP OF KAMRUP METRO
ASSAM
REP. BY ITS SECRETARY
SHRI JITU MANI BARMAN
RESIDENT BANI NAGAR
REHABARI
GUWAHATI- 781008
IN THE DIST.OF KAMRUP METRO
ASSAM.

2: SHRI BHAKTI BHUSAN DEY
S/O LT. SATYENDRA KUMAR DEY R/O LACHIT NAGAR
ULUBARI
GUWAHATI- 781007
IN THE DIST. OF KAMRUP METRO
ASSAM.
VERSUS

1:THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR

GUWAHATI-781006.

2:THE ASSAM PHARMACY COUNCIL
A COUNCIL CONSTITUTED UNDER THE PROVISIONS OF SECTION 19 OF
THE PHARMACY ACT

1948 AND HAVING ITS OFFICE SITUATED IN THE OFFICE OF THE
DIRECTOR OF HEALTH SERVICE

ASSAM HENGRABARI

GUWAHATI- 781036

IN THE DIST. OF KAMRUP METRO
ASSAM.

3:THE REGISTRAR

ASSAM PHARMACY COUNCIL

HENGRABARI

GUWAHATI- 781036

ASSAM.

4:THE DIRECTOR

HEALTH SERVICES

ASSAM

HENGRABARI

GUWAHATI - 781036

IN THE DIST. OF KAMRUP METRO
ASSAM.

5:THE DRUGS CONTROLLER

ASSAM

HENGRABARI

GUWAHATI - 781036

IN THE DIST. OF KAMRUP METRO
ASSAM.

Advocate for the Petitioner : MR.N B P SINGHA

Advocate for the Respondent : SC

HEALTH

:: BEFORE ::

HON'BLE MR. JUSTICE MANOJIT BHUYAN

ORDER

31-05-2018

Heard Mr. B.J. Talukdar, learned counsel for the petitioners in WP(C) 3822/2017; Mr. D.

Baruah, learned counsel for the petitioners in WP(C) 1744/2015 and WP(C) 3438/2015; Mr. D. Das, learned Senior Counsel for the petitioners in WP(C) 2284/2015; Mr. D. Sarmah, learned counsel for the petitioner in WP(C) 3673/2012 and Mr. B. Acharyya, learned counsel for the petitioner in WP(C) 6614/2014. In so far as the respondents are concerned, Mr. D. Saikia, learned Sr. Additional Advocate General, Assam, represents the State of Assam in the Health & Family Welfare Department; Mr. U.K. Nair, learned Senior Counsel for the Assam Pharmacy Council and the Registrar of the said Council, and Mr. B. Gogoi, learned counsel representing the Director of Health Services, Assam and the Drug Controller, Assam.

2. The members of the Pharmacist Forum of Assam, the Assam Drug Dealer Association and the individual writ petitioners in this bunch of cases were initially registered as Pharmacists under State Pharmacy Council in States other than Assam. Being natives of Assam and on their applications before the Assam Pharmacy Council, their names were enrolled in the Register of Pharmacists, although there were hiccups in between for which some of the members had to approach this Court.

3. Except for the case laid out in WP(C) 1744/2015, the rest of the writ petitions are bound by a common thread, in that, the grievance pertain to alleged illegal and arbitrary exercise of power of Section 36 of the *Pharmacy Act, 1948* (in short, "the Act") in removing/deleting the names of the petitioners Pharmacists from the Register of the Assam Pharmacy Council permanently. Direction was also made to surrender the original Pharmacist Registration Book, failing which, to face consequences under the *Pharmacy Act, 1948* and Government order dated 08.09.2010.

4. The orders of removal of names from the Register were passed at the instance of the Executive Committee of the Assam State Council, based on report of a Verification Committee, so constituted by the State Government. Merely on the basis of the said report, the Executive Committee had unanimously resolved to delete the names from the Register of Assam Pharmacy Council permanently. Reason assigned, common to all, is in respect of Section 36(1)(i), in that, name of the petitioners Pharmacists had entered into the Register by

error or on account of misrepresentation or suppression of a material fact. In addition, in certain cases, it was also due to non-submission of documents.

5. On a perusal of the orders of removal, this Court was *prima-facie* of the opinion that the same marked a departure from the procedure envisaged under Section 36 of the Act. It lacked due application of mind as no specific grounds had been assigned. Removal of names from the Register being an extreme step, an action under Section 36 of the Act demanded strict adherence to the principles of natural justice and the in-built procedural safeguards available to a proceedee. In fact, Section 36(1) of the Act itself categorically provides that removal of name of a registered Pharmacist from the Register must be on satisfaction derived after giving the person a reasonable opportunity of being heard and after such further enquiry, if any, as the Executive Committee may think fit to make.

6. Having regard to the contents and the apparent shortcomings in the procedure adopted by the authority concerned while passing the orders of removal of names from the Register *vis-à-vis* the provisions under Section 36 of the Act, parties on either side have expressed clear agreement and consensus that the exercise has to be re-done in strict accordance with the relevant provisions under the Act. Therefore, as agreed to by and between the parties, all the 6(six) writ petitions stands disposed of with the following directions:

(i) The orders of removal of the names of the petitioners Pharmacists from the Register of the Assam Pharmacy Council, which are the subject-matters in the present writ petitions, are set aside and quashed.

(ii) The members of the Pharmacist Forum of Assam, the members of the Assam Drug Dealer Association, including the individual writ petitioners, who are parties in the present 6(six) writ petitions, shall appear before the Assam Pharmacy Council at its registered office in Guwahati on either of the 3(three) dates i.e. 20.06.2018 or 21.06.2018 or 22.06.2018 and shall furnish their names, addresses, present Pharmacist registration number, self-

photograph, in the form of an application, addressed to the Registrar-cum-Secretary, Assam Pharmacy Council and obtain acknowledgement thereon. Along with the applications the petitioner Pharmacists shall enclose all relevant documents justifying their qualifications in terms of Section 31 of the Act, which is reproduced hereunder:

“31. Qualifications for entry on first register.—[A person who has attained the age of eighteen years shall be entitled] on payment of the prescribed fee to have his name entered in the first register if he resides, or carries on the business or profession of pharmacy, in the State and if he—

(a) holds a degree or diploma in pharmacy or pharmaceutical chemistry or a chemist and druggist diploma of an Indian University or a State Government, as the case may be, or a prescribed qualification granted by an authority outside India, or

(b) holds a degree of an Indian University other than a degree in pharmacy or pharmaceutical chemistry, and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than three years, or

(c) has passed an examination recognised as adequate by the State Government for compounders or dispensers, or

(d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-section (2) of section 30.”

(iii) The Assam Pharmacy Council, through its authorised officers, shall accept the applications and enter the particulars so given in a separate Register maintaining serial numbers and by recording the date of receipt of the application.

(iv) No applications from any of the petitioners Pharmacists shall be entertained after 22.06.2018.

(v) On the basis of the particulars received from the petitioners Pharmacists, the Executive Committee of the Assam Pharmacy Council, through the Registrar-cum-Secretary, Assam Pharmacy Council, shall scrutinise the applications and for the said purpose may, if necessary, cause further scrutiny of the materials on the basis of which registration was

granted in another State. This shall be done having regard to the broad ratio laid down by the Supreme Court in *Rajendera Prasad Bagaria v. Pharmacy Council of State of Rajasthan*, (2012) 3 SCC 212, particularly paragraphs 18 and 19 thereof, which are extracted hereunder:

“18. In the instant case, the Executive Committee was satisfied that there was an error in enrolling the appellant as a registered pharmacist. At that stage, the appellant has been called upon to give his explanation. In this enquiry, one State Council can certainly look into the prima facie material on the basis of which registration was granted in another State. This is because the State Council is given the power to scrutinise such applications, and if such registration has been permitted by any error to that extent, it can certainly take the corrective step. Such a decision cannot amount to sitting in appeal over the decision of another State’s Council. This is because the State Council concerned is answerable to the person purchasing the medicines from the pharmacists in the State. It is its duty to see that pharmacists do have the necessary educational qualifications or the experience as required.

19. In a country where there is so much illiteracy, the requirements concerning educational qualifications or experience of the pharmacist have to be scrupulously scrutinised. If the registration of the pharmacist concerned obtained from another State does not appear to be a justified registration, the transferee State Council can certainly decline to accept that registration for the purpose of carrying on the profession of a pharmacist in the transferee State, or cancel such registration once effected. Such scrutiny is permissible at the time of initial registration, and also later when complaints are received, leading to the enquiry for the purpose of removal from their register.”

(vi) The Assam Pharmacy Council through its Registrar-cum-Secretary shall issue individual Notices to the petitioners Pharmacists informing the time, date and place for their appearance before the said Executive Committee. Different time, date and place may be fixed having regard to the maximum number of noticees who can be heard on one particular date for the purpose of Section 36 of the Act.

(vii) On the fixed date, time and venue, the petitioners Pharmacists who have been called to appear, shall make appearance and thereafter the Executive Committee shall afford to each of the petitioners Pharmacists a reasonable opportunity of hearing which would also include giving opportunity to explain against adverse findings, if any, pursuant to any exercise done under (v) above.

(viii) While taking a decision in exercise of powers under Section 36 of the Act, the Executive Committee shall have strict regard to the findings on (vii) above and to the provisions under Section 31(as extracted above) as well as to sub-section (2) of Section 32 of

the Act which, for ready reference, is extracted under:

“32. Qualifications for subsequent registration.–

(1)

(2) After the Education Regulations have by or under section 11 taken effect in the State, a person shall on payment of the prescribed fee be entitled to have his name entered on the register if he has attained the age of [eighteen years], if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved under section 14 [or is a registered pharmacist in another State].”

(ix) The decision or order of the Executive Committee, after completing the exercise indicated above, shall be communicated to each of the petitioners Pharmacists. In case of any decision taken for deletion or removal of the name of the individual petitioners Pharmacist from the Register of the Assam Pharmacy Council, the specific reasons for reaching the conclusion be mentioned in the order.

(x) The entire exercise be completed by the Executive Committee of the Assam Pharmacy Council within an outer limit period of 4(four) months from the date of issue of Notice in terms of (vi) above. Interim order passed in the present bunch of cases shall continue until fresh decision is taken by the said Executive Committee in terms of the directions above.

Ordered accordingly.

JUDGE

Comparing Assistant