
(2011) 06 SHI CK 0263
In the High Court Of Himachal Pradesh
Case No : CWP No. 157 and 4226 of 2010

Dina Nath Dhawan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Pharmacy Act, 1948 — Section 10, 14, 19, 2, 3

Citation : (2011) 06 SHI CK 0263

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Vikas Rajput, for the Appellant; R.P. Singh, Assistant Advocate General, S.C. Sharma, Sandeep Sharma, Asst. Solicitor General, for the Respondent

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in both the petitions, the same were taken up together for hearing and are being disposed of by a common judgment. However, in order to maintain the clarity, the facts of CWP No. 157/ 2010 are being taken into consideration. Material facts necessary for the adjudication of these petitions are that the name of the petitioner was registered in the First Register of Pharmacists, u/s 31 (a) (b), (c), (d) of the Pharmacy Act, 1948 (hereinafter referred to as the "Act" for brevity sake) on 28.8.1969. Thereafter the same was renewed for life time; in the year 1983-84, vide Annexure P-2. Respondent No. 3 has taken a decision on 26.5.2009 to carry out renewal after every five years and the same was to be carried lot-wise and periodically. Renewal fee for the same is to be Rs. 500/- up to six months and with late fee of Rs. 50/- per month up to six months from the date of renewal. Thereafter, public notice was issued by respondent No. 3 on 15.11.2009

2. Mr. Vikas Rajput has strenuously argued that issuance of Annexures P-3 and P-4 is in contravention of the provisions of the Act. According to him, neither respondents No. 1 to 3 nor respondent No. 4 have jurisdiction on the basis of

which Annexures P-3 and P-4 could be issued.

3. Mr. Sandeep Sharma, learned Assistant Solicitor General of India, Mr. R.P. Singh, learned Assistant Advocate General and Mr. S.C. Sharma have vehemently argued that the decisions have been taken in the larger public interest and the same is in conformity with the provisions of the Act.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. It will be apt at this stage to refer to salient features of the Pharmacy Act, 1948. The enactment has been made to make provisions for the regulation of the profession and practice of pharmacy and for that purpose to constitute Pharmacy Councils. According to the Statement of Objects and Reasons of the Act, it was desirable that, as in most other countries, only persons who have attained a minimum standard of professional education should be permitted to practice the profession of pharmacy. Accordingly, it was proposed to establish a Central Council of Pharmacy, which has to prescribe the minimum standards of education and approve courses of study and examinations for Pharmacists, and Provincial Pharmacy Councils, which were responsible for the maintenance of provincial registers of qualified Pharmacists. It was further proposed to empower Provincial Governments to prohibit the dispensing of medicine on the prescription of a medical practitioner otherwise than by, or under the direct and personal supervision of, a registered Pharmacist. Section 2 of the Act interprets various terms like "Central Council", "Central Register", "Medical Practitioner" "Registered Pharmacist", "State Council" and "University Grants Commission". Section 3 provides for the constitution and composition of Central Council. Section 10 provides that Central Council may subject to the approval of the Central Government, make regulations prescribing the minimum standard of education required for qualification as a Pharmacist. Section 19 provides for the constitution and composition of State Councils. Chapter IV of the Act provides for registration of Pharmacists. Section 32 lays down the qualification for subsequent registration and section 33, in detail, provides for the scrutiny of applications for registration. Section 34 provides for renewal fees. It reads thus:

34. Renewal fees.

(1) The State Government may, by notification in the Official Gazette, direct that for the retention of a name on the register after 31st day of December of the year following the year in which the names is first entered on the register, there shall be paid annually to the State Council such renewal fee as may be prescribed, and where such direction has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates.

(2) Where a renewal fee is not paid by the due date, the Registrar shall remove the name of the defaulter from the register :

Provided that a name so removed may be restored to the register on such

conditions as may be prescribed.

(3) On payment of the renewal fee, the Registrar shall 1 [issue a receipt therefor and such receipt shall be proof of renewal of registration].

1. Subs, by Act 24 of 1959, S. 12, for "in the prescribed manner endorse the certificate of registration accordingly" (w.e.f. 1-5-1960).

6. Respondent No. 4 has framed Education Regulations called "Education Regulations, 1991 for the Diploma Course in Pharmacy".

The minimum qualification, as per Regulation 2, for registration as a Pharmacist is diploma in Pharmacy (two years course after 10+2 with science academic stream followed by 500 hours of practical training spread over a period of three months). However, B. Pharma degree holders (four years after 10+2 science academic stream) can also get themselves registered as a Pharmacist. Minimum statutory requirements for registration as per section 32 (2) are as under:

- a) Applicant should have attained the age of 18 years and pay the prescribed fee;
- b) Applicant should reside or carry on the business or profession of pharmacy, in the State; and
- c) Applicant should have passed an approved examination or he should possess a qualification approved u/s 14 of the Pharmacy Act or is a registered pharmacist in another State.

7. Meeting of the Presidents and Registrars of the Councils was held with respondent No. 4 in the month of March, 2004. It was noticed that some of the State Pharmacy Councils were granting life time registration/ membership to candidates, as a result of which, if some registered pharmacist goes out of the country or expires, the State Pharmacy Councils were not aware of the same. This issue was further discussed in the 72nd meeting of the Central Council held on 5/6.4.2004, whereby it was decided to issue recommendations/guidelines to all State Pharmacy Councils to introduce a system for renewal of registration and accordingly, the candidates are required to attend minimum two refresher courses of one day duration, each in a span of five years organized by any one of the following body:

- i) Pharmacy Council of India;
- ii) State Pharmacy Councils;
- iii) Government recognized associations;
- iv) State Governments;
- v) Professional bodies like IPA, IPGA, IHPA, FIPO etc.

Every five years registration certificates shall be revalidated.

8. Thereafter in sequel to meeting held on 5/6.4.2004, Annexure R-3 was issued

to all the State Pharmacy Councils on 13.5.2004 by respondent No. 4. Respondent No. 3 for the first time discussed this issue in its meeting held on 26.5.2009 whereby it was also decided to renew membership/registration after every five years as per agenda item No. 5. Thereafter, a public notice was issued vide Annexure P-3/T on 15.11.2009, according to which the renewal of the registration of pharmacists was to be done after every five years and those who have already completed their five years, they were informed to approach respondent No. 3 within 45 days of the publication of the notice. The renewal was subject to payment of Rs. 500/-.

9. The Court is of the considered view that the decision for renewal of membership/ registration after every five years has been taken in larger public interest. The pharmacists are required to discharge duties of great public importance. Their qualifications are regulated under the Education Regulations framed in the year 1991. The candidates, who are to be enrolled and registered, should be in possession of diploma/degree from a recognized institution. Candidates should have attained the age of 18 years at the time of their registration and should pay the prescribed fee, as per section 32 (2) of the Act. In the general meeting of the Presidents and Registrars, it was felt that the renewal of registration should take place after every five years and for renewal of registration, the candidate should attend minimum two refresher courses of one day duration, each in a span of five years organized by any one of the bodies, as mentioned hereinabove. The decision has been taken by respondent No. 3 pursuant to Annexure R-3 dated 13.5.2004. The persons, who have to seek renewal after five years have to attend minimum two refresher courses to make them abreast with the latest technology in the field of medicine. According to preamble of Objects and Reasons, a person who has obtained minimum standard of professional education should only be permitted to practice the profession of pharmacy. The pharmacist is required to play a very important role between doctor and patient. The prescription of medicine of late has changed. Special skill and scientific knowledge is required to sell medicine. If a person is not fully trained, it can adversely effect the health of the people. A person who is not well qualified and is not abreast with the latest technology may not know the effect of atmospheric reason on medicines during storage if exposed to light, air or moisture etc. It will also check the unscrupulous people to sell the medicine across the counter.

10. There is a specific bar u/s 42 of the Act to the effect that no person other than a registered pharmacist shall compound, prepare, mix or dispense any medicine on the prescription of a medical practitioner and whosoever contravenes, this section is punishable with imprisonment for a term which may extent to six months or with fine not exceeding Rs. one thousand or with both. Thus, it can safely be said that the decision of respondent No. 3 to grant life time membership/registration was contrary to the letter and spirit of the Act. The Act provides for condition for training of the candidates and only well qualified pharmacists are registered. The renewal after five years will keep check to see

whether the person is alive or has not gone out of State or India. There is no merit in the contention of Mr. Vikas Rajput that it will cause immense hardships to the pharmacists to come to Shimla. The persons, who are working as pharmacists, are earning their livelihood by selling medicines etc. Coming to Shimla for registration after five years, cannot be termed as hard or harassment. The members should be alive to their social obligations cast upon them by the provisions of Pharmacy Act, 1948. Minimum fee of Rs. 500/- has been provided at the time of renewal and the endeavour has also been made as per item No. 4 of the Agenda Meeting held on 26.5.2009 to ensure that computer generated certificate bearing serial number and full signature of the candidate is prepared. The guidelines issued by respondent No. 4, which have been formulated by respondent No. 3 are in conformity with law and the same have been framed in letter and spirit of the Act.

11. The Court is of the considered view that the renewal of the membership should be strictly restricted as per section 34 of the Act. A detailed procedure has been prescribed therein whereby the State Government may, by notification in the Official Gazette, direct that for the retention of a name on the register after 31st day of December of the year following the year in which the name is first entered on the register, they shall pay annually to the State Council such renewal fee as may be prescribed and where such direction has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates. The consequences of non-renewal by due date is that the Registrar shall remove the name of the defaulter from the register. The underlined principle for renewal every year as per section 34 is to supervise whether the person is working as pharmacist or not. The period of five years prescribed for renewal is on the higher side. The decision of respondent No. 3 to grant life-time membership and now the decision of all the respondents to renew the membership after five years runs contrary to the spirit of section 34 of the Act. The action of the Central Council of Pharmacy and State Pharmacy Council must conform to the Act. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petitions and the same are dismissed so also the pending application(s), if any. However, respondents are directed to issue fresh guidelines as per section 34 of the Act towards renewal of membership to make the Act effective. Needful be done within a period of ten weeks after the receipt of certified copy of this judgment. No costs.