

(2002) 07 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1472 of 2002

Dr. Atmaram Daryani

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Pharmacy Act, 1948 — Section 30, 31, 34

Citation : (2003) 1 MPHT 123

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; S.K. Rao, for Respondent Nos. 2, 4 and 5, for the Respondent

Judgement

Arun Mishra, J.—Petitioner seeks a writ of prohibition against respondent No. 4 directing not to usurp the function of Pharmacy Council of M.P. in renewing the registration which are not first registered with Chhattisgarh Pharmacy Council.

2. The petitioner submits that he is the duly elected President of Madhya Pradesh Pharmacist Association and his registered office is at Jabal-pur. The grievance of the petitioner is that respondent Nos. 4 and 5, Chhattisgarh Pharmacy Council and Chhattisgarh Pharmacy Tribunal, are renewing registrations which are granted by the Madhya Pradesh Pharmacy Council, of which they have no authority in law.

3. It is further averred that Madhya Pradesh Pharmacist Association is a body incorporated under the Madhya Pradesh Non-Trading Corporation Act, 1962. The aforesaid body represents the interest of Pharmacists which are registered with Madhya Pradesh Pharmacy Council in the State of Madhya Pradesh. There has been reorganisation of State of Madhya Pradesh as per M.P. Reorganisation Act, 2000, Two successor States have come into being, i.e., State of Chhattisgarh and State of Madhya Pradesh. The petitioner relying on Section 74 of Reorganisation Act submits that the Body in State of Madhya Pradesh shall continue to function in State of Madhya Pradesh and exercise jurisdiction as existed before the

appointed day over the State of Chhattisgarh for a maximum period of two years or till such period as decided by mutual agreement between two successor States. The Pharmacy Act, 1948, contains provisions for registration as Pharmacist. Section 19 of the Pharmacy Act, 1948, provides for constitution and composition of State Councils. Section 30 provides for preparation of first register. Section 34 provides for renewal fees of registration. The grievance of the petitioner is that Pharmacy Council has been established in the State of Chhattisgarh and it has notified as per Annexure P-I that it would renew the registrations of which it has no right.

4. A return has been filed by the respondent No. 2 contending that Registrar of Registration Tribunal is not renewing any certificate of registration issued by the Madhya Pradesh Pharmacy Council. A notification was issued only for entering Pharmacists in the first register to be maintained by the Chhattisgarh Pharmacy Council.

5. Shri Alok Aradhe, learned Counsel, for the petitioner submits that no certificate, which has been granted by M.P. Pharmacy Council, can be renewed by the respondent Nos. 2, 4 and 5. Annexure P-I gives an indication that they are indulging in such an illegal practice.

6. Shri S.K. Rao, learned Council, for respondent Nos. 2, 4 and 5 has stated that the Chhattisgarh Pharmacy Council has prepared first register and is renewing the certificates only of the incumbents duly entered in the first register of Chhattisgarh Pharmacy Council. Same stand has been taken by the respondent No. 2.

7. In view of the rival submissions, it is necessary to have a glance into the provisions of the Act and the Rules. Section 15A provides for the Central Register. The Central Council shall cause to be maintained in the prescribed manner a register of pharmacists to be known as the Central Register, which shall contain the names of all persons for the time being entered in the register of a State. Section 19 of the Act provides the Constitution and composition of State Councils. Chapter IV deals with Registration of Pharmacists. Section 29 makes preparation and maintenance of register. It is incumbent upon the State Council to prepare and maintain the register as soon as may be after this Chapter has taken effect in any State. The State Council shall as soon as possible after it is constituted assume the duty of maintaining the register in accordance with the provisions of the Act. The register shall include the full name and residential address of the registered persons, the date of his first admission to the register, his qualification for registration, his professional address and if he is employed by any person, the name of such person and such further particulars as may be prescribed. Section 30 provides for preparation of first register. For the purpose of preparing the first register, the State Government shall by notification in the Official Gazette constitute a Registration Tribunal consisting of three persons, and shall also appoint a Registrar who shall act as Secretary of the Registration Tribunal. Section 30(2) provides that the State Government

shall, by the same or a like notification, appoint a date on or before which applications for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal. The Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration u/s 31, shall direct the entry of the name of the applicant on the register. Section 31 provides for qualification for entry on first register. Section 31 of the Act reads as under :--

"31. Qualification 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 druggist diploma of an Indian University or a State Government as the case may be, of a prescribed qualification granted by the authority outside; 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."

8. Otherwise also, it is clear from the provisions of Sections 30 and 34 of the Act that Chhattisgarh Pharmacy Council cannot renew the registration of an incumbent whose name has not been entered in the first register maintained by the Chhattisgarh Pharmacy Council. Right of renewal in my opinion is available to Chhattisgarh Pharmacy Council only with respect to those pharmacists who have chosen to get their names entered in that Council. M.P. Council has jurisdiction to renew those who have not moved out to Chhattisgarh. In my opinion, for exercising right of renewal, entry in the first register is necessary. As a result of reorganisation, it has become necessary to undertake this exercise by respondent Nos. 4/5. In my opinion, though initial registration may have been granted by M.P. Pharmacy Council but after the date on which Pharmacy Council in Chhattisgarh has been constituted and formation of State of Chhattisgarh has taken place, Chhattisgarh Council can renew registration for the period falling due after date on which entry of the pharmacists has been made in first register by Chhattisgarh Council.

9. In view of above, it is directed that Chhattisgarh Pharmacy Council shall not

renew any registration granted by the Madhya Pradesh Pharmacy Council which has not been entered in the first register of the Chhattisgarh Pharmacy Council. In the facts and circumstances, costs on parties.