

(2012) 08 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 31396 of 2011

Institute of Pharmaceuticals Science and Technology,
Padmapur

APPELLANT

Vs

Pharmacy Council of India and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1)(g), 21, 21A
Pharmacy Act, 1948 — Section 10, 12, 12(1), 14

Citation : AIR 2013 Ori 8

Hon'ble Judges : Kumari Sanju Panda, J

Bench : Single Bench

Advocate : D.K. Mohapatra and A. Sahoo, for the Appellant; V. Narsingh, S.K. Senapati and S. Das, for the Respondent

Final Decision : Allowed

Judgement

Kumari Sanju Panda, J.—The petitioner-institute of Pharmaceutical Science and Technology, Padmapur, represented through its member of the Governing Body, namely, Bibhu Prasad Biswal, has filed this writ petition challenging Clause 4.2 of the Prospectus for admission into D. Pharma Course, which is contrary to the Pharmacy Council of India Act and Rules framed thereunder and is violative of Articles 14 and 16 of the Constitution of India. Learned counsel for the petitioner submitted that in Clause 4.2 of the Prospectus issued by Director of Medical Education & Training, Odisha, opposite party No. 3, overage limit has been fixed to 35 years for taking admission into Diploma in Pharmacy (in short "D. Pharma"). He, further submitted that there is no age bar for taking admission in the Women's Polytechnics, Bhubaneswar which is imparting D. Pharma Course, though the said institution is approved by the Pharmacy Council of India and managed by the DTET, Orissa. The D. Pharma Course is a Technical Course and from the inception, nowhere under the Statute any over-age limit has been prescribed. Till last year, no overage limit has been prescribed by the opposite parties to get admission into D. Pharma Course. In the State of Orissa, more

than 50% seats are lying vacant in different Pharmacy colleges. Accordingly, if the aforesaid stipulation is made under Clause 4.2 fixing overage limit by the Opp. parties, it will reduce admission in D. Pharma Course since there is no reasonable nexus to fix over-age limit, more particularly when no such prescription has been made under the Pharmacy India Act, 1948 and the Regulations framed thereunder. Fixing over-age limit by Opp. parties 3 and 4 is unreasonable, arbitrary and they have no jurisdiction to fix such over-age limit violating the Act and Regulations.

2. A counter-affidavit has been filed by Opp. party No. 4 taking a stand that reference made by the petitioner to Pharmacy Council of India Act and the Rules is a misnomer and there is no such Act and Rules. Diploma Education in Pharmacy is regulated by the Pharmacy Council of India (in short "PCI"). u/s 10 of the Pharmacy Act, 1948, it has been prescribed the minimum qualification for admission into Diploma in Pharmacy Part-I course and courses of studies and other details pertaining to Examination of D. Pharma course. The State Government constituted a D. Pharma Selection Committee comprising of seven members. Out of seven members, two members representing the private Diploma Colleges of the State of Odisha, which are approved by the PCI. The said Committee decided about the modification to be made in the prospectus in the last year on 3-6-2011. All the members of the Committee unanimously agreed to fix the upper age limit apart from the lower age limit. Accordingly, clause 4.2 was incorporated in the prospectus and the Selection Committee also intimated the said fact to the Registrar-cum-Member Secretary, PCI. New Delhi and they did not raise any objection to the same. The State Government also approved the said prospectus on 25-8-2011 and admission is concluded as per the schedule and nobody raised any objection before taking admission, Non-prescription of upper age limit by the PCI as per the Pharmacy Act 1948 does not debar the State authorities from making stipulation vis-a-vis the upper age limit and non-fixation of such upper age limit by other State Boards is irrelevant Opp. party No. 1 PCI has also filed a counter-affidavit categorically taking as stand that the Council, to ensure uniform implementation of the educational standards throughout the country, prescribes the minimum qualification and also approves the courses of study and examination for Pharmacists i.e. approval of the academic training institutions as provided u/s 12 of the Pharmacy Act. Section 12(1) speaks that any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course. The PCI after such enquiry in conformity with the Education Regulations, shall declare the said courses of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists. Clause 12(2) says that PCI is empowered to inspect the institution for approval of the courses of study or examination in order to verify as to whether the course conducting authorities have provided the minimum required facilities prescribed by the Council. The State Pharmacy Council registers as candidate who has passed Diploma in Pharmacy as pharmacist. For registration of a Pharmacist, the requirement is

that (a) the applicant should have attained the age of 18 years and pay the prescribed fees, (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 other State. As per the guidelines prescribed by World Health Organization (in short "WHO"), Pharmacy education is a health oriented subject and requires special technical skill. The students are given a vigorous training on all facets of drug i.e. reading of prescription, type of dosage forms, drug formulations, uses, compatibility, incompatibility, drug interactions, side effects storage, indications, contraindications, etc. Pharmacist acts as an important member of "Health Care Team" to function as a perfect material media for a physician in combating diseases. Special skill and scientific knowledge is required to sell medicines because any lapse at the retail sale level can adversely affect the public health. With the development of the potent and synthetic drugs, the handling of drugs has become highly crucial as well as complex to safeguard the public health, which is of prime importance. u/s 10 of the Pharmacy Act, the PCI is empowered to frame Regulations. Accordingly, Education Regulations, 1991, has been framed prescribing the minimum standard of education required for qualification as a Pharmacist. The Regulation is duly notified. Regulation 5 of Education Regulations further prescribes minimum qualification for admission to Diploma in Pharmacy Part-I Course and the admission making authority to Diploma courses are required to apply with the said provision for admission to first year Diploma course in Pharmacy. The question regarding applicability of age limit for being eligible to take admission in D. Pharma course was considered by the Executive Committee of the PCI in its meeting held on 3-10-2005 and the said Committee noted that the Education Regulations, 1991 are silent on fixing the age limit for admissions to D. Pharma course.

3. Learned counsel appearing for Opp. party No. 1 submitted that in view of the above position, Opp. party Nos. 3 and 4 are not authorized under the Act to prescribe or addition any age limit for admission into D. Pharma course.

4. Considering the aforesaid rival submissions of the parties and after through the provisions of the Act and the Regulations, it reveals that the PCI being the Central body has been authorized under the Pharmacy Act and regulation framed thereunder to prescribe the minimum educational qualification for taking admission into D. Pharma course and courses of studies and conduct of examination. The Act and the Regulation do not authorize Opp. parties 3 and 4 to prescribe upper age limit of a candidate to take admission into the said course. Prescribing the upper age limit was under consideration before this Court for admission into technical education like MBBS and BDS, where the minimum qualification was prescribed. In Writ Appeal No. 555 of 2011, a Division Bench of this Court held that the Rules and Regulations framed under the Statute are framed regarding the eligibility for admission into MBBS course and such terms and conditions in order to maintain good standards in the professional medical

course for its implementation. In the absence of the Regulation framed by the Medical Council of India with prior approval of the Central Government fixing the upper age limit of a student for admission into MBBS course in a college, fixing such upper age limit in the prospectus by OJEE which is not authorized in law and the same is in violation of the provisions of the MCI Regulations. Therefore, the same will not be binding upon the State Government and its authorities, who will be conducting the Entrance Test Examination for the eligible candidates to get seats. Therefore, insertion of Clause 4.2 the Prospectus by the OJEE is without any authority of law and the same is violative of the principle of fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 and 21A of the Constitution of India.

5. It is said that age and physical challenges are no bar for a person, who wishes to prove himself or herself after getting education. These persons are ready to adopt to every changing situation. Admittedly, a country like India, where the health sector is a deficit sector and trained and skilled persons are not available. A bold stand is to be taken to reduce the deficits and move ahead which will reduce the deficits. It is desirable that, as in most of the other countries, only persons who have attained a minimum standard of professional education should be permitted to practice the profession of Pharmacy. It is accordingly proposed to establish a Central Council of Pharmacy. It is 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. With this object, the Pharmacy Act was enacted.

6. In view of the above object of the Act and the position of law and in the present case, since the D. Pharma Selection Committee as constituted by the State Government has no jurisdiction to fix upper age limit in the absence of any Statutory provision prescribed under the Act and Regulation as stated in the foregoing paragraphs, the same is arbitrary and unreasonable and is liable to be quashed.

7. Accordingly, this Court quashes Clause 4.2 of the Prospectus stipulating the upper age limit. The writ petition is allowed. No costs.