

(2006) 11 JH CK 0005
In the Jharkhand High Court

Jharkhand Chemists and Druggists Association	APPELLANT
Vs	
Jharkhand State Registration Tribunal Pharmacy and Another	RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Pharmacy Act, 1948 — Section 1, 10, 11, 13, 15A

Citation : (2007) 3 JCR 524

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Petitioner is a Society registered under the Societies Registration Act, 1860. It is alleged that about 8,000 Chemists,

Druggists and Pharmacists are its members. The grievance projected in this petition is non-acceptance of the applications for renewal of the

Pharmacists Licence and consequently non-renewal of such licences. The members of the petitioner-Society were duly registered and entered in

the register maintained under the Pharmacy Act, 1948 prior to creation of State of Jharkhand. After bifurcation of State of Bihar and creation of

successor State of Jharkhand, such of the pharmacists who had have their place of business/profession in the State of Jharkhand have been denied

renewal of their Pharmacists Licence. Petitioner-Society has named a number of such pharmacists/ licensees who were registered in the unified

State of Bihar by the Bihar State Pharmacy Council, Patna but have been refused renewal of their registration in the State of Jharkhand after its

creation.

2. It is relevant to notice some of the provisions of the Pharmacy Act, 1948. Section 3 provides for constitution of a Pharmacy Council of India. Its

composition is provided in the said section itself. Section 10 empowers the Central Council constituted u/s 3 to make regulations, to be called the

Education Regulations, prescribing the minimum standard of education required for registration as a pharmacist. Section 19 further provides for

constitution of the State Pharmacy Councils consisting of the members as referred to under this section. By virtue of Section 11 Education

Regulations framed in terms of Section 10 can be extended to the States in accordance with the procedure prescribed therein. u/s 15-A the

Central Council is required to maintain a Central Register containing the names of all persons registered as pharmacist. Sub-section (2) of Section

15-A further provides retention of copies of Central Register by the State Pharmacy Council. Section 29 of the Act mandates maintenance of

Register of Pharmacists for the State. Section 30 speaks of preparation of first register and constitution of Registration Tribunal whereas Section

31 speaks of qualifications for entry on first register. Section 32 provides qualifications for subsequent registration. It is useful to re-produce

Sections 30, 31, and 32 of the Pharmacy Act, 1948 hereinbelow:

30. Preparation of first register.-(1) 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.

(2) 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.

(3) 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 for the name of the applicant on the register.

(4) The first register so prepared shall thereafter be published in such manner as the State Government may direct, and any person aggrieved by a

decision of the Registration Tribunal expressed or implied in the register as so published may, within sixty days from the date of such publication,

appeal to an authority appointed by the State Government in this behalf by notification in the Official Gazette.

(5) The Registrar shall amend the register in accordance with the decisions of the authority appointed under sub-Section (4) and shall thereupon

issue to every person whose name is entered in the register a certificate of registration in the prescribed form.

(6) Upon the constitution of the State Council, the register shall be given into its custody, and the State Government may direct that all or any

specified part of the application fees for registration in the first register shall be paid to the credit of the State Council.

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 disposed 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.

32. Qualification for subsequent registration.-(1) After the date appointed under Sub-section (2) of Section 30 and before the Education

Regulations have, by or u/s 11, taken effect in the State, a person who has attained the age of eighteen years shall on payment of the prescribed fee

be entitled to have his name entered in the register if he resides or carries on the business or profession of pharmacy in the State and if he-

(a) satisfied the conditions prescribed with the prior approval of the Central Council, or where no conditions have been prescribed, the conditions

entitling a person to have his name entered on the first register as set out in Section 31, or

(b) is a registered pharmacist in another State, or

(c) possess a qualification approved u/s 14:

Provided that no person shall be entitled under Clause (a) or Clause (c) to have his name entered on the register unless he has passed a

matriculation examination or an examination prescribed as being equivalent to a matriculation examination.

(2) After the Education Regulations have by or u/s 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 u/s 14 or is a registered pharmacist in another State.

Section 34 deals with the renewal fees whereas Section 36 provides for removal from register.

3. It is not in dispute that most of the members of the petitioner-Society for whose benefit this writ petition has been preferred were duly registered

as pharmacists before coming into existence of the State of Jharkhand in accordance with Section 30 of the Act.

4. It appears that a PIL being WP (PIL) No. 1429/02 Ajay Kumar Vishwakarma and Ors. v. State of Jharkhand and Ors. came to be filed in this

Court. This PIL came to be disposed of vide judgment dated 18.6.2003. This PIL was preferred by three persons who hold Diplomas in

Pharmacy challenging the notification issued by the State Government inviting applications for registration of the qualified persons as pharmacist in

terms of Section 31 of the Act. The grievance of the petitioners in the said PIL was to grant registration or include in the register only such persons

who are pharmacists and have the requisite qualification in terms of the Pharmacy Council of India (Education Regulations) Act, 1991. They have

submitted that they have filed the PIL with a view to keep out unqualified persons from practicing as pharmacists. It was also pleaded that there is

no necessity of preparing of a fresh first register u/s 30 of the Act after the formation of the State of Jharkhand. The State of Jharkhand had

justified the issuance of the advertisement notice inviting applications for

registration as pharmacist on the ground that after creation of the State of Jharkhand the State has decided to prepare first register in terms of Section 30 of the Act and has accordingly constituted the Tribunal in terms of Section 30 of the Act and invited applications from the candidates who possess the requisite qualification in terms of Section 31 of the Act. On consideration of the various provisions of the Pharmacy Act and the rival contention of the parties a Division Bench of this Court disposed of the aforesaid PIL with following observations:

13. That apart, a number of persons now practicing their profession as Pharmacists, have already been included in the First Register prepared in the State of Bihar to which at that time they belonged. That Registration or inclusion in the Register gave them a right to practice and their right to continue their profession until and unless their names are removed from the Register in terms of the Act. There is nothing in the Bihar

Reorganisation Act which took away the right of such persons to continue to practice their profession in the territory now forming the part of the

State of Jharkhand based on the inclusion of their names in the First Register prepared in terms of Section 30 of the Pharmacy Act. Unless there is

something in the Reorganisation Act to show that such rights are being deprived of, the Court has to take it that the rights continue to subsist. No

body has a case that the Pharmacy Act has been repealed in the State of Jharkhand. If so, the inclusion in the Register confers such persons the

right to continue their practice. There is no obligation on them to get themselves again included in the Register merely on the basis that some of the

territories of the erstwhile State of Bihar have been constituted into a separate State. Even going by the analogy of Section 1(3) of the Pharmacy

Act, as pointed out by one of the counsels appearing in the case, the Education "Regulations being governed by Chapter II of the Act, came into

force at once even in the new State of Jharkhand brought about by territorial changes. In this situation, it is not possible to accept the argument that

even those who have got themselves included In the First Register in the undivided State of Bihar are bound to get themselves again included in

another First Register on the creation of the State of Jharkhand. A deprivation of the right already conferred, cannot be readily inferred and in the

absence of a specific statutory provision in that regard, such a position can not

also be envisaged.

14. There was already a First Register for the State of Bihar including the territories forming the State of Jharkhand in terms of Section 3 of the

Bihar Reorganisation Act. Those who are included in the First Register and who are practicing their profession within the territories newly forming

the State of Jharkhand, would continue to have the right to practice their profession in the newly created State of Jharkhand. The First Register for

Jharkhand would be of those persons who are already in the Register prepared for the undivided State of Bihar based on their territorial loyalty or

the situs of their practice. There will, therefore, be no need for preparing the First Register all over again as urged by the counsel for the State of

Bihar and the Tribunal constituted u/s 13 of the Act. The First Register for the State of Jharkhand is the register already prepared for the undivided

State of Bihar including all those who are now of Jharkhand or are practicing their profession in the territories of the State of Jharkhand. What

would arise would only be the inclusion of further names of qualified persons, if they possess the requisite qualification under the Education

Regulations and in terms of Section 32(2) of the Pharmacy Act. The argument, that on the formation of a State, the State is obliged to prepare a

First Register in terms of Section 30 of the Act with reference to Section 31 of the Act cannot, therefore, be accepted.

15. We are also somewhat skeptical on the need for preparing a First Register in terms of Section 30 of the Act all over again. According to the

petitioners, the idea is to include a number of unqualified persons and persons backed by bogus or manufactured certificates in the Register

actuated by oblique motives. On the pleadings, we do not find any adequate material to come to such a conclusion. But the fact remains that it will

be much more easier for any State committed to public weal and public health to proceed on the basis of the existing First Register prepared by

the erstwhile State of Bihar and by calling applications from those who are qualified in terms of Education Regulations and in terms of Section 32 of

the Act to get themselves included in that First Register so that the Register could be made up-to-date for the needs of the State of Jharkhand.

Instead of doing that, the attempt is seen to be to create another First Register with a majority of persons not having any qualification either by way

of diploma or degree in pharmacy or qualification in compounding or dispensing and merely based on alleged service in some medicinal outlet or

another. This certainly cannot be considered to be in public interest and in the interests of general health and preventing of abuse of drugs and

dispensation of the same only by qualified pharmacists.

16. In the light of what we have discussed above, the Writ Petition is allowed. We declare that there is no need to prepare another First Register in

terms of Section 30 of the Pharmacy Act merely because the State of Jharkhand has come into existence with effect from 15.11.2000 and that the

First Register prepared for the State of Bihar would continue to be that of the State of Jharkhand and inclusion in that Register of additional names

can only be on the basis of fulfilling the requirements of Section 32(2) of the Act, or in other words, having the requisite qualifications in terms of

Education Regulations formulated u/s 10 of the Pharmacy Act and adopted in the undivided State of Bihar u/s 11 of the Act with effect from

7.2.1958. The notification, Annexure-5 is quashed. There will be no order as to costs.

5. This PIL was followed by another PIL being WP (PIL) No. 5563 of 2002 which came to be disposed of vide order dated 6.8.2003 holding

that directions have already been issued in WP(PIL) No. 1429 of 2002 and no fresh directions are required. After the aforesaid two PILs were

disposed of, one Shyamal Kumar Sinha, who was registered as pharmacist in the erstwhile State of Bihar under Registration No. B-12083 and

whose registration was valid up to 31.12.2004 applied for renewal of registration before the Jharkhand State Registration Tribunal, constituted u/s

30 of the Act. for the year 2005. Tribunal refused to entertain his application. Being aggrieved of non-entertainment of his application, Shyamal

Kumar Sinha filed a writ petition being WP(C) No. 2776 of 2005 before this Court. This Court relying upon the observations /directions issued by

a Division Bench of this Court in WP(PIL) No. 1429 of 2002 passed following orders:

5. Following the decision of the Division Bench judgment of this Court, this writ petition is allowed and the respondents are directed to accept the

application of the petitioner for renewal of registration as Pharmacist for the year 2005.

6. From the counter filed by the Tribunal in this writ application, it is stated that consequent upon the direction of the Court in WP (C) No. 2776 of

2005 application of Shyamal Kumar Sinha was entertained and his registration bearing no Bihar 12083 of 1992 has been renewed up-to

23.12.2005.

7. Petitioner Society, in this case, has relied upon the observations and directions in WP(PIL) No. 1429 of 2002 as also the directions in WP(C)

No. 2776 of 2005 and claimed relief in the nature of mandamus for a direction to the respondent-Tribunal to entertain the applications of the

members of the petitioner Society and consequently renewal of the licence in view of their names being duly entered in the first register prepared

u/s 30 of the Pharmacy Act by the unified State of Bihar. This prayer of the petitioner has been resisted by the Tribunal on the ground that only

qualified pharmacists are entitled to be registered and brought in the first register u/s 30 who possess requisite qualification as prescribed u/s 32(2)

of the Act and are having requisite qualification in terms of Education Regulation formulated u/s 10 of the Pharmacy Act and adopted in the

undivided State of Bihar u/s 11 of the Act w.e.f. 7.2.58 Respondent Tribunal has also placed reliance upon some of the observations of the

Division Bench of this Court in WP(PIL) No. 1429 of 2002.

8. Intervention Petition has been filed on behalf of the Jharkhand State Pharmacists Association and Ajay Kumar Vishwakarma. These interveners

have also opposed the writ application and the relief claimed therein. Intervenors have contended that only the qualified persons are entitled to be

registered as pharmacist who possess the requisite qualification as prescribed under the education regulations formulated u/s 10 of the Pharmacy

Act and adopted u/s 11 of the said Act by the undivided State of Bihar w.e.f. 7.2.58. It is stated that most of the members of the petitioner-

Society are unqualified and thus they are not entitled to claim renewal of their registration.

9. I have heard learned Counsel for the parties at length.

10. Sum and substance of the controversy involved in this petition is whether persons who have been registered as pharmacist in the unified State

of Bihar and whose names are duly entered in the register prepared and maintained u/s 30 of the Pharmacy Act are entitled to continue as

pharmacist irrespective of the fact whether they possess the qualifications prescribed under the Education Regulation formulated u/s 10 of the Act

and duly approved by the State of Bihar u/s 11 thereof w.e.f. 7.2.58.

11. As noticed above, a Division Bench of this Court in WP(PIL) No. 1429/02 has already ruled that all those persons whose names were

included in the First Register prepared u/s 30 of the Act in the unified State of Bihar need no fresh registration and there is no need to prepare

another First Register in terms of Section 30 of the Pharmacy Act for the successor State of Jharkhand after its creation w.e.f. 15.11.2000. It is

further ruled that the First Register prepared for the State of Bihar would continue to be that of the State of Jharkhand. On inquiry from the Court,

it has been pointed out that the judgment dated 18.6.2003 passed in the aforesaid PIL has attained its finality. I have extensively noticed paras 13

to 16 of the judgment rendered by this Court in aforesaid PIL. The findings are binding precedence for this Court for similar questions. The issue

involved in this petition is squarely covered by the findings in the aforesaid judgment and the directions issued therein. Learned Counsel appearing

for the respondents has vehemently argued that a large number of unqualified persons were included in the First Register prepared by the erstwhile

State of Bihar and there are a numbering about 14,000 and thus State of Jharkhand intends to allow only the qualified persons to function as

Pharmacists. This averment is made in para 12 of the counter-affidavit filed by respondent Nos. 1 & 2. However, the counter lacks requisite

details in respect to the members of the petitioner-Society who do not possess requisite qualifications. Be that as it may, the Pharmacy Act

contains a provision for removal from register as provided u/s 36. In view of the findings of the Hon''ble Division Bench and that the respondent-

Tribunal has implemented the judgment of the Hon''ble Division Bench as also the judgment in WP(C) No. 2776 of 2005, this petition is allowed.

Respondents are directed to entertain the applications for renewal of such of the pharmacists whose names are entered in the First Register

prepared in the unified State of Bihar and pass the order after charging requisite fees as prescribed under Rules. However, respondents are at

liberty to initiate proceedings for removal in terms of Section 36 in appropriate cases where in the opinion of the respondents any particular person

is not possessed of requisite qualifications/eligibility as prescribed under law. Members of the petitioner-Society are directed to file their

applications for renewal within a period of two months and same shall be considered within a period of two months thereafter and consequential

orders passed.