
(2013) 07 P&H CK 0580
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2079 of 1996

Pawan Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 172 PLR 212

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Advocate : Ashok Sharma Nabhewala, for the Appellant; Gaurav Garg Dhuriwala, DAG, Punjab for the State and Mr. Kulbir Narwal, Addl. A.G., Haryana for the State, for the Respondent

Judgement

Augustine George Masih, J.—By this order, we propose to decide two writ petitions i.e. Civil Writ Petition Nos. 2079 of 1996 (Pawan Kumar and others v. Union of India and others) and 8395 of 1996 (M/s. Rama Medical Store, Rajpura and others v. Union of India and others) as common questions of facts and law are involved. The facts are being taken from Civil Writ Petition No. 2079 of 1996. Petitioners, who are running chemist shops, have approached this Court, praying for quashing of clause 15(ii)(c) of Rule 65 of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as "1945 Rules") being violative of Articles 14 and 19(1)(g) of the Constitution of India. Challenge has also been posed to the cut off date i.e. 31.12.1969 fixed as per Rule 65(15)(ii)(c), which states that person with four years practical experience of dispensing, which in the opinion of the licensing authority is adequate and has been approved by that authority to be a qualified person. Reliance has also been placed on a judgement of the Division Bench of Allahabad High Court reported as M/s. J. Dass Brothers v. Union of India and others, 1992 (1) E.F.R. 606.

2. Petitioners assert that they have more than four years experience of running the chemist shops and have been issued licence under Rule 65 of 1945 Rules for selling retail drugs and medicines under the Drugs and Cosmetics Act, 1940. As

per terms of Rule 61 of 1945 Rules, the licence is required from the Licensing Authority i.e. Civil Surgeon in the area of operation for every druggist and chemist for retail or wholesale without which he is not allowed to sell the drugs and medicines. Further as per Clause 15(ii) to Rule 65 of 1945 Rules, qualifications of a person have been prescribed, as per which every druggist and chemist is required to have a qualified person/registered pharmacist, who holds a degree or diploma in pharmacy or pharmaceutical chemistry of an Institute approved by the Licensing Authority or is a registered pharmacist as is defined in the Pharmacy Act, 1948. It further provides that a person having four years practical experience of dispensing, which in the opinion of the licensing authority is adequate and has been approved by the authority as a qualified person on or before 31.12.1969, shall be treated as a qualified person. The licence granted for a period of three years is renewable after the expiry of same.

3. Petitioners have impugned Clause (c) of sub rule (15) of Rule 65, whereby condition has been imposed upon the retailers/wholesale dealers in drugs mandating a qualified person as a requirement for running the shop, assailing it to be a superfluous condition with no nexus to be achieved for the object of issuing the licence under Rule 65 of 1945 Rules. This rule has been challenged on the ground that this is violative of Articles 14 and 19(1)(c) of the Constitution of India as the same is discriminatory and is an unreasonable restriction imposed upon the licence holders, restricting them to carry out their occupation, trade and business, which restriction is unreasonable, unwarranted and unqualified.

4. Counsel for the petitioners started his submissions on the basis of pleadings but when intervened and on being pointed out by counsel for the respondents with reference to the Full Bench judgement of the Allahabad High Court passed in Civil Miscellaneous Writ Petition No. 981 of 1994, Ramesh Giri, Proprietor, M/s. Goswami Medical Stores v. State of V.P. and others, decided on 29.1.1996, Annexure R-1, that the said judgement covers the case of the petitioners on all fours against them and, thus, the writ petitions are liable to be dismissed, counsel for the petitioners has rather insisted upon and asserted that the said judgement would not be applicable to the case of the petitioners in toto. The counsel has also made a futile effort to impress upon the Court that there are certain observations made by the Division Bench, which could go in favour of the petitioners and the same have been approved by the Full Bench judgement.

5. We have heard the learned counsel for the petitioners at length and have gone through the Full Bench judgement of Allahabad High Court in Ramesh Giri, Proprietor, M/s. Goswami Medical Stores" case (supra) and are of the considered view that all the points, as have been raised by the petitioners in the writ petitions, have been dealt with by the Full Bench, which covers the case against the petitioners on all counts.

6. The point of discrimination, as has been sought to be urged by counsel for the petitioners while referring to sub-clause (ii)(c) of sub-rule (15) of Rule 65 of 1945 Rules, which fixes a cut off date as 31.12.1969 for a person with four years

practical experience to be treated as a qualified person is without any basis as the competent authority is entitled to prescribe the conditions for regulating the sale of drugs and medicines and can impose any restriction, which may be just and reasonable. Although all citizens have a fundamental right under Article 19(1) (g) of the Constitution of India to enter into business of retail sale of medicines and drugs but once they choose to enter into said business, the same will be subject to the regulations prescribed under the Act and the Rules and the conditions imposed vide Rule 65(15)(ii)(c) of 1945 Rules can not be said to be unreasonable restriction as the same is directly connected with the health of the society at large, which can not be put at the mercy of unqualified persons merely on the basis of the experience which they would have gained over a period of time. The age old practice of selling and consuming medicines without much care can not be allowed to be followed and continued in the light of the advancement in the field of medicine. Therefore, services of a qualified person for selling of medicines is not only just and proper but is the need of hour and it would help for the betterment of the general public, which otherwise would be at the mercy of quacks and unqualified persons, who are not well conversant with various combination of medicines, which are now available in the market. The object of the Act being of eradicating the abuse of evil of misuse of drugs, the provisions of the Act and 1945 Rules have to be read and interpreted keeping in view the purpose for which the enactment has been brought about.

7. We are, therefore, of the considered view that assertion of counsel for the petitioners and insistence upon arguing the case on merits despite there being a Full Bench judgement of Allahabad High Court referred to above, covering all the aspects, which have been pleaded by the petitioners in the present writ petitions, amounts to wasting the precious judicial time of the Court, which can not be permitted. It is high time when the counsel, who are officers of the Court, take up the responsibility of assisting the Court earnestly in discharge of their judicial functions and deciding the cases expeditiously. They are required to share the burden of the piling pendency of cases and facilitate their disposal instead of wasting the time of the Court, which can be utilised for dispensing justice to the litigants who are waiting in queue. Endeavour should be made to reduce the length of arguments in Court by precisely putting forth the point in a fair and systematic manner so that the matter can be decided speedily. But we are pained to note that contrary to this has happened during the hearing of this case. Insistence of the counsel for the petitioners to continue with his submissions despite putting him to caution resulted in wasting of the time of the Court, which could have been better utilized for taking up other cases. But this was not to be. There being no merit in both the writ petitions, the same stand dismissed with costs of Rs. 5,000/- in each case.