
(2002) 09 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 31 of 2002

R.K.Lalvela

APPELLANT

Vs

State of Mizoram and others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 33, 33
Pharmacy Act, 1948 — Section 30, 30, 32, 32, 41(b)

Citation : AIR 2003 Guw 47

Hon'ble Judges : S. K. KAR, J

Bench : Single Bench

Advocate : Michael Zothankhuma, N. Sailo, Advocates appearing for Parties

Judgement

1. The petitioner states that he is a qualified Pharmacist as per Certificate given by Assam Medical Examination Board long back in the year 1958 and it was confirmed by Assam Pharmacy Council, Shillong, in 1965. He was appointed as a Pharmacist i/e. Mobile Dispensary, Aizawal, by Civil Surgeon, Mizo, Aizawal in 1965. But he relinquished his post in the year 1975 to establish his own Pharmacy business at Kolasib Venglai and he was granted licence under Forms 20A and 21A of the relevant provisions of Drugs and Cosmetics Act of 1940 by the concerned respondents and he continued to earn his livelihood by selling drugs.

2. That thereafter on the basis of being a qualified Pharmacist he applied for general drug licence under Forms 20 and 21 of the same Act and was granted the same in the year 1991. On applications the Respondents continued to issue the renewal licences under Forms 20 and 21 till 1996. That before the date of expiry of the licence by end of 1998 he applied for renewal by November, 1998 to Drug Inspector, Kolasib. But although other pharmacist were granted renewal in time, his renewal certificate was issued to him on 1582000 only but in down graded Forms of 20A and 21A. He made representations to concerned authorities but with no result.

3. That he continued in his efforts to get back the licence in original form but nothing happened and only on 30102000 he was led to know that he cannot be granted the licence that he was claiming unless his name is registered with Mizoram Pharmacy Council. Accordingly on 22112000 petitioner deposited the requisite fees for the purpose and submitted all requisite documents. On pretext of his having no requisite licence the Drug Inspector Pu Lalsawma, being inimical to him, seized some drugs from his pharmacy and only after several representations and intervention of Minister the same were released by the Drug Inspector concerned who filed Criminal complaint against him for allegedly violating provisions of Drugs and Cosmetics Act, 1940 before Deputy Commissioner, Kolasib. (Case No. 16/2001 u/Ss. 28A, 27(b)(ii) of Drugs and Cosmetics Act, 1940).

4. That on his approach respondent No.3 told him that he has to submit the certificate issued to him by the Assam Pharmacy Council and the Criminal Case No. 16/2001 is to be settled before any such action to that effect is to be taken. He contended that there was no bar to grant him licence and registration certificate as his name has been already entered in No. 0190 of Mizoram Pharmacy Council. That letter of respondent2, vide Memo No. B17011/535/93/DHS/Drugs/173 D/ 2632002, was without jurisdiction and it was improper for the respondents not to answer his prayer pending since 27112000 but to file criminal case in April, 2001 instead.

5. Accordingly, he prayed for restoration of his drugs licence in Forms 20 and 21 which was granted to him earlier, for staying of the proceedings in complaint case No. 16 of 2001 before the Court of Magistrate, First Class, Kolasib and for issuing the registration certificate etc.

6. The case was contested by the respondents filing affidavit in opposition through one Mr. Paul Remthanga, MCS, Under Secretary to the Govt. of Mizoram, Department of Health and Family Welfare. It is submitted that on the basis of Compoundership Certificate the petitioner cannot claim himself to be a qualified Pharmacist unless he was registered with the Mizoram Pharmacy Council in terms of Rule 65(15) of the Drugs and Cosmetics Rules, 1945 read with Section 41(b) (ii) of the Pharmacist Act, 1948. He was issued drugs licence in Forms 20 and 21 in the year 1991 only for his professional interest. That consequent to Mizo district becoming a state the first register of Pharmacists under the State of Mizoram was prepared in the year 1993. That the petitioner was found misusing his drugs licence by selling certain cough syrup and tablets to youngster without prescription of registered Medical practitioner at exorbitant rates. Accordingly, Drugs Inspector concerned suggested the down grading of his licence, also he being a nonregistered Pharmacist. That it was only on the recommendation of the drugs inspector the licencing authority down graded the licence. That it is not a fact that Drugs Inspector was inimical to the petitioner. That the petitioner adopted fraudulent means to acquire registration under Mizoram Pharmacy Council etc.

7. That the petitioner did not get his name registered in the First Register in terms of S. 30 of the Pharmacy Act, 1948. Now that the period of First Register has already lapsed, the Petitioner has no qualification to be entered in the said Register, since he is under matriculate, vide Section 32 of Pharmacy Act.

8. That the Drugs Inspector has no role in issuance of licence, which is the job of the Drugs Controller. The seizures of certain drugs were made due to violation of law/rules. That Mizoram Pharmacy Council in its meeting on 10122001 had considered the application of the petitioner for registration but the Council could not issue the registration certificate in view of Section 36 of the Pharmacy Act, 1948 and for contravening Section 18(B) and (C) of the Drugs and Cosmetics Act, 1945. Accordingly, the petition is without merit and liable to be dismissed with costs.

9. I have heard learned counsel on both sides, perused the several annexures in support of the respective contentions of the contesting parties.

10. I find there is no disputes that the petitioner was having Compounder Certificate by erstwhile Assam Pharmacist Council, Shillong and he was appointed as Pharmacist in the office of Civil Surgeon in Mizo District. There is also no dispute that he was having his Pharmacist business at Kolasib and was granted Drugs licence under Forms 20 and 21 in 1991 and continued to renew it till 1996. Only in the year 1998 his troubles started and his licence was renewed belatedly only on 1582000 but in down graded form. The question raised before court, under the facts and circumstances aforesaid, is whether such down grading is permissible in law.

11. The petitioner has approached the Court with three distinct prayers :

i) For issue of mandamus directing respondents to renew his drugs licence in original form that was granted to him earlier.

ii) For setting aside the letter of respondent No. 2 dated 2632002 Memo No. B.17011/535/93/DHS/DRUGS/173 with a direction to issue Registration Certificate to the petitioner registering his name in the Register of Pharmacist.

iii) For stay of proceedings in connection with Criminal Complaint No. 16/2001 pending before the Court of Magistrate First Class, Kolasib.

12. I find that there is no appropriate statements in the writ petition for any order of quashing a legal proceedings. Moreover, these are controversial question of facts and cannot be interfered by the writ jurisdiction unless it is shown that a proceeding is without any legal foundation or in violation of any right, fundamental or otherwise, of the petitioner.

13. Coming to the question of issuance of drugs licence, it is the admitted position that the drugs licence was issued in the year 1991 and continued till 1996. There is no dispute that in due course, the petitioner applied for renewal of his licence which was done but belatedly and that too down grading the licence

to Form 20A and 21A without showing any reasons whatsoever thereby interfering with right to professions of the petitioner without any valid reasons. It would have been a different question had there been show cause notice and after hearing the petitioner the down graded licence was issued. Rule 66 of the Drugs and Cosmetics Rules, 1945 prescribed procedure for cancellation or suspension of licence but only after observation of such procedure.

14. Therefore, on the principle of estoppel and waiver the respondents cannot take a plea at this stage that the petitioner has no qualification to seek renewal of his licence which was definitely granted to him in 1991 after the authority being duly satisfied.

15. On the question of registration of the name of the petitioner in the Register of Pharmacist prepared under Section 30 of the Pharmacy Act, it is the admitted position that the petitioner did not apply earlier and accordingly his name was not entered in the First Register prepared by the State Pharmacy Council. Section 32 of the said Act, particularly clause (b) of subsection (1), provides that a Registered Pharmacist in another States can subsequently get his name registered in the Register of Pharmacist maintained by the Pharmacy Council of the State if, otherwise he is qualified as per Provisions of Sections 32 and 32A, 32B of the Act, etc. etc.

16. After making proper scrutiny on the contention of the petitioner that he was a Registered Pharmacist under Pharmacy Council of Assam and in due recognition to that fact he was given drugs licence by the respondent concerned. Subsequently on extraneous considerations the issue of Certificate was withheld, it seems. The petitioners contention that fees for registration and connected documents were received by the Mizoram Pharmacy Council by granting him valid receipt on 27112000 (Annexure5A) is not disputed. The annexure filed shows that the Assistant Drug Controller, vide his letter No. B.17011/5/89/DHS/DRUGS/198 dated 12599 had admitted that he is a qualified pharmacist and accordingly now respondents cannot deny him registration. The subsequent developments vide contents of annexures would show that contention of petitioner that the concerned Drug Inspector is not welldisposed with him has some substance.

17. It would be seen that the present petitioner is a senior Citizen of above 65 years of age, got his Compounder Certificate in the year 1958, it was endorsed by Assam Pharmacy Council, Shillong, on 2951965, he served the Government till 1976 as pharmacist and thereafter he was enjoying his licence to sell drugs till 1996 without any obstacles. It is contended by the petitioner that due to some unfortunate incidents with the Drugs Inspector concerned, his misfortune started and incidentally the Drug Inspector is in control of the affairs of registration.

18. It is seen that in the counter affidavit, one contention of the respondents is that the petitioner is not a matriculate and was not having valid Certificate as

Pharmacist for which his registration cannot be considered and that there is a criminal proceedings pending against him.

19. Going through the materials on record, I find that criminal proceedings for violation of Drug Rules/Licence was instituted only after withholding of his drug licence improperly by the authority concerned. The respondents have not contested the submission of the petitioner that in November, 1998 he applied for the renewal of drug licence which was granted to him in down graded form only on 1582000. There is apparently no explanation for this inordinate delay during which intervening period his troubles and disputes had started. Therefore, I find that withholding the licence in original form of 20 and 21 was not proper and legal.

20. Coming to the question of registration, however, it is depending on so many factors and particularly on question of production of evidence as to existence or nonexistence of certain facts which cannot be decided in the writ petition of the present nature. But facts remained that since he was enjoying licence to sell drugs since 1991, which could be granted only in favour of a pharmacist, there is no point for the respondents to take volteface and say that he is not a pharmacist at all.

21. In the result, the petition is disposed of with the following directions :

1) Within 30 days from today his drugs licence in the original form of 20 and 21 be issued to the petitioner after accepting requisite fees, if it has not been accepted already.

2) The question of entering his name in the Pharmacy Council of the State be taken up with right earnest and necessary order be passed either by accepting or rejecting his prayer to that effect within 90 days from the date of his order, failing which, petitioner will have fresh cause of action to agitate.

3) No order is required to be passed in connection with criminal proceeding pending before Court of law i.e. complaint case No. 16/2001, before Magistrate, First Class, Kolasib.

22. No costs.

Order accordingly.