
(2005) 07 JH CK 0015

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2776 of 2005

Shyamal Kumar Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Pharmacy Act, 1948 — Section 10, 11, 30, 32(2)

Citation : AIR 2006 Jhar 36 : (2005) 4 JLJR 173 : (2005) 4 JCR 188

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Jai Prakash, Ritesh Kr. Bobby and Prashant Kumar, for the Appellant; J.C. to A.C., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ petition, the petitioner seeks a direction upon the respondents to accept his application for renewal of registration as Pharmacist for the year 2005.

2. The petitioner's case is that he was registered as Pharmacist in the erstwhile State of Bihar being Registration No. B-12083. The registration was renewed upto 31.12.2004 and a certificate of renewal was issued by Jharkhand State Registration Tribunal, Pharmacy, Ranchi. In 2005 the petitioner made an application before respondent No. 3. The Registrar Jharkhand State Registration Tribunal Pharmacy, Pharmacy Institute, Ranchi along with a bank draft of Rs. 125/-. The petitioner learnt that the concerned respondent is not accepting the renewal application of the Pharmacists who were practicing in the State of Jharkhand. It is stated by the petitioner that he was registered as Pharmacist long back in the year 1992 and his name was included in the First Register prepared by the erstwhile State of Bihar. In terms of the Division Bench judgment of this Court i.e., WP (PIL) No. 1429 of 2002, his right of practice continues and cannot be taken away.

3. A counter-affidavit has been filed on behalf of respondent Nos. 2 and 3 wherein it is stated that in the State of Jharkhand no separate State Pharmacy Council has been constituted and it was only on 12.11.2001, by the order of the Governor, Registration Tribunal purported to be u/s 30 of the Act has been constituted. The Tribunal made an advertisement in the newspaper calling for application for inclusion of the name in the first Register from qualified persons who took degree or diploma in Pharmacy or Pharmaceutical Chemistry or Chemist and a Druggist from an Indian University. It is stated that in terms of the provision of the said Act, the applicant is required to produce relevant documents and materials to satisfy the Registrar about the fulfillment of condition by him. According to the respondent, no such registration to any unqualified person can be done.

4. I have heard Mr. Jai Prakash, learned Counsel appearing for the petitioner and, learned J.C. to A.G. Admittedly, the petitioner was registered as Pharmacist long back in the year 1992 and his name was included in the First Register prepared by the erstwhile State of Bihar. The right of the petitioner has been fully saved by virtue of the provision of the Act and the Division Bench judgment of this Court in the case of Ajay Kumar Vishwakarma and Ors. v. State of Jharkhand and Ors. rendered in WP (PIL) No. 1429 of 2002. The Division Bench while considering the right of those persons whose names have been included in the First Register, observed as under :--

"13. That apart, a number of persons now practicing in 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 to practice their profession until and unless their names are removed from the Register in terms of the Act. There is nothing in the Bihar Reorganization 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 counsel 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 the First Register in terms of Section 30 of the Act with reference to 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 decree in pharmacy or any 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 07.02.1958. The notification Annexure-5 is quashed. There will be no order as costs.

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.