

SUPREME COURT OF INDIA

Rajendra Prasad Bagaria

Vs.

Pharmacy Council of State of Rajasthan

C.A.No.6895 of 2008

(P. Sathasivam and H.L. Gokhale JJ.)

06.02.2012

JUDGEMENT

H.L. GOKHALE J.

1. This appeal by special leave is directed against the judgment and order dated 8.6.2006 passed by a Division Bench of the High Court of Rajasthan, Jaipur Bench, in D.B. Special Appeal (Writ) No. 507/2006 arising out of S.B. Civil Writ Petition No. 4309/2005, whereby the Writ Petition filed by the appellant was dismissed.

Short facts leading to this appeal are as follows:-

2. The appellant claims that after passing the Secondary School Examination in 1986, he worked in a Medical Store named as 'Todi Medicals' at Sikar in the state of Rajasthan from October 1991 to March 1997. It is his case that though on the basis of his experience, he was otherwise eligible to be enrolled as a pharmacist in Rajasthan, he could not get so enrolled since by the time he could apply, the registration of pharmacists in Rajasthan was closed. He claims that thereafter he shifted to Sikkim in August, 2001, where he worked for about two months in a medical store at Gangtok. On the basis of the certificate issued by his employer in Sikkim, he applied for registration as a pharmacist with the Sikkim State Pharmacy Tribunal (Sikkim Tribunal for short), and he was so registered over there on 5.12.2001.

3. The purpose of his sojourn to Sikkim having been achieved, the appellant returned to Kherli in the State of Rajasthan towards the beginning of January 2002.

On the basis of this registration from Sikkim, he applied on 8.4.2002 for his registration with the Pharmacy Council of the State of Rajasthan (respondent No.1 herein - `Rajasthan Council' for short) under Section 32 of The Pharmacy Act, 1948 (hereinafter referred to as `the Act').

4. It is the further case of the appellant that the Rajasthan Council made necessary enquiries with the Sikkim Tribunal, and thereafter enrolled him as a registered pharmacist by their registration certificate dated 4.6.2002. It however, appears that some complaints were received by the Government of Rajasthan (respondent No.2) with respect to functioning of a large number of in- eligible pharmacists in the State. Consequently, on being informed about the same, the Rajasthan Council decided to look into such cases. On 22.7.2004, a notice was issued by the first respondent to the appellant informing him that Enquiry Committee constituted by the Rajasthan Council had found his registration to be irregular, and therefore, he should appear before the Executive Committee of the Council on 2.8.2004, to explain as to why his name should not be removed from the Register of Pharmacists of Rajasthan by invoking its powers under Section 36 of the Act. The appellant did not care either to reply, or to remain present before the Executive Committee. The Executive Committee, therefore, considered the material on record, and took the decision to cancel his registration. This decision was approved by the Full Council on 16.3.2005 and the appellant was informed to surrender his certificate of registration by the Council by its further communication dated 12.4.2005.

5. The appellant filed a Writ Petition to challenge this decision of the first respondent. The said Writ Petition bearing No. 4309/2005 was heard by a Single Judge of the Rajasthan High Court. The appellant did not dispute the fact that he did not appear before the Executive Committee, nor did he dispute any of the aforesaid facts. The learned Single Judge accepted the submission of the respondents that the appellant had an alternative remedy to file an appeal under section 36(4) of the Act which he had not exhausted. That apart, he also noted that though the appellant was given an opportunity of personal hearing by the Executive Committee, he did not place any convincing proof of his registration having been done as per provisions of the Act by the Sikkim Tribunal. The learned Single Judge also noted that no such documents were produced before him also, which would indicate that the appellant had acquired necessary experience in Sikkim, before obtaining the registration over there. The learned Single Judge therefore, dismissed the said Writ Petition by his judgment and order dated 7.4.2006.

6. Aggrieved by this decision, the appellant filed a D.B. Special Appeal (Writ) No. 507/2006. It was submitted on behalf of the appellant that the State Government had no business to make an enquiry about the validity of appellant's registration, nor the Executive Committee had any authority to cancel his registration with the Rajasthan Council which had issued the same to him on the basis of his registration in another State. As far as the first submission is concerned, the Division Bench took the view that the State Government did have the authority to look into the complaints, which it received from the citizens. It had merely brought those complaints to the notice of the Rajasthan Council. Ultimately, it is the Executive Committee of the Rajasthan Council which had taken necessary decision after calling upon the appellant to attend an enquiry, which he did not. As far as the decision of the Rajasthan Council is concerned, it was held that the appellant had failed to prove that his registration in Sikkim could be considered to be a valid one for Rajasthan since he had not worked for requisite period in Sikkim. The Division Bench, therefore, held that the decision of the Executive Committee of the first respondent could not be faulted. The appeal was accordingly dismissed.

7. Being aggrieved by this judgment and order, the present appeal has been filed. The principle submission of the appellant's counsel is that the first respondent having granted registration to the appellant after making an initial enquiry with the Sikkim Tribunal, could not review its decision, and secondly, in any case, the appellant had the necessary qualification for his registration with the first respondent under Section 31 of the Act, and therefore the orders of the Executive Committee, as well as the two judgments and orders, are required to be set aside. The counsel for the respondents, on the other hand, defended the decision of the first respondent as well the two judgments and orders, as being perfectly justified.

Consideration of the rival submissions

8. Now, if we see the Preamble of The Pharmacy Act, 1948, it states, that it is an Act to make better provisions for the regulation of the profession and practice of pharmacy, and for that purpose to constitute the Pharmacy Councils. The Act provides for entry of the names in the Register of Pharmacists in three stages:

(i) The first stage is entry of names in the first register under Section 30 of the Act. Qualifications for such entry are given in Section 31 of the Act. Under Section 30(2), the State Government is required to fix a date by notification, and applications for registration must be made by the appointed date.

(ii) The second stage is where people fail to apply for entry in First register, they can apply for registration u/s 32(1) if they satisfy the requisite qualifications.

(iii) The third stage is for registration u/s 32 (2) of the Act as per education regulations, or as a registered pharmacist in another state. The qualifications for entry in the first register are provided under Section 31 of the Act which reads as follows:-

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 {The words the Provinces of omitted by the A.O.1950.} 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 dispensed on prescriptions or 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 compounds 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.

As the Section itself shows, that to be a pharmacist, importance is given to have a degree or diploma in pharmacy, failing which any other degree is permitted with three years experience of dispensing medicines, or passing of an examination recognised by the State Government, or having an experience of not less than five years of working in a hospital or dispensary

in which drugs are regularly dispensed on prescriptions of medical practitioners.

9. Section 32 of the Act provides for subsequent registration, which also includes amongst the qualified categories, a registration on the basis of being a registered pharmacist in another State. The submission of the appellant was that he was already registered in Sikkim, which registration was accepted by the first respondent, and therefore, the first respondent issued him its registration certificate on 5.12.2001. The Executive Committee of the first respondent could not review the decision once taken, since there was no provision for review in the Act. In support of this proposition, he relied on the judgment of this Court in *Patel Narshi Thakershi and Ors. Vs. Shri Pradyumansinghji Arjunsinghji* reported in 1971(3) SCC 844.

10. In this behalf, what is material to note is that the first respondent has taken the action against the appellant under Section 36 of the Act. This Section reads as follows:-

36 - Removal from register

(1) Subject to the provisions of this section, the Executive Committee may order that the name of a registered pharmacist shall be removed from the register, where it is satisfied, after giving him a reasonable opportunity of being heard and after such further inquiry if any, as it may think fit to make.-

- (i) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact, or

(ii) that he has been convicted of any offence or has been guilty of any infamous conduct in any professional respect which in the opinion of the Executive Committee, renders him unfit to be kept in the register, or

(iii) that a persons employed by him for the purposes of his business of pharmacy. {Ins. by s.13, *ibid.*(w.e.f.1-5-1960).} [or employed to work under him in connection with any business of pharmacy] has been convicted of any such offence or has been guilty of any such infamous conduct as would, if such person were a registered pharmacist, render him liable to have his name removed from the register under clause (ii) :

Provided that no such order shall be made under clause (iii) unless the Executive Committee is satisfied--

(a) that the offence or infamous conduct was instigated or connived at by the registered pharmacist, or

(b) that the registered pharmacist has at any time during the period of twelve months immediately preceding the date on which the offence or infamous conduct took place committed a similar offence or been guilty of similar infamous conduct, or

(c) that any person employed by the registered pharmacist for the purposes of his business of pharmacy [or employed to work under him in connection with any business of pharmacy] has at any time during the period of twelve months immediately preceding the date on which the offence or infamous conduct took place, committed a similar offence or been guilty of similar infamous conduct, and that the registered pharmacist had, or reasonably ought to have had, knowledge of such previous offence or infamous conduct, or

(d) that where the offence or infamous conduct continued over a period, the registered pharmacist had, or reasonably ought to have had, knowledge of the continuing offence or infamous conduct, or

(e) that where offence is an offence under the.{ Substitute. by Act 70 of 1976, s.18, for Drugs Act, 1940 (w.e.f.1-9- 1976).} [Drugs and Cosmetics Act, 1940] (23 of 1940), the registered pharmacist has not used due diligence in enforcing compliance with the provisions of that Act in his place of business and by persons employed by his [or by persons under his control]

(2) An order under sub-section (1) may direct that the person whose name is ordered to be removed from the register shall be ineligible for registration in the State under this Act either permanently or for such period as may be specified.

(3) An order under sub-section (1) shall be subject to confirmation by the State Council and shall not take effect until the expiry of three months from the date of such confirmation.

(4) A person aggrieved by an order under sub-section (1) which has been confirmed by the State Council may, within thirty days from the

communication to him of such confirmation, appeal to the State Government, and the order of the State Government upon such appeal shall be final.

(5) A person whose name has been removed from the register under this section or under sub-section (2) of section 34 shall forthwith surrender his certificate or registration to the Registrar, and the name so removed shall be published in the Official Gazette.

11. Section 36 (1) (i) provides for removing the name of a registered pharmacist in the event there is an error in his registration, or where it is registered on account of misrepresentation or suppression of a material fact. In our view, this sub-section gives sufficient power to the Executive Committee to recall its decision. In the instant case obviously, there was an error on the part of the first respondent in accepting the registration from Sikkim as a valid registration for transfer of the appellant as a pharmacist in Rajasthan. Ultimately, it is the State Pharmacy Council which is responsible for having well- equipped pharmacists in the State who have the requisite qualifications and/or experience. The fact is that the second respondent had received complaints with respect to a large number of in-eligible persons functioning as pharmacists. Therefore, when this fact was brought to the notice of the first respondent, a notice was given to the appellant affording him a personal opportunity as required under Section 36 (1) of the Act. However, the appellant did not avail of this opportunity. Hence, all that the Executive Committee had done was to consider the material on record and to cancel his registration in Rajasthan. The Executive Committee of the first respondent had not cancelled his registration in Sikkim. It cannot, therefore, be said that the Executive Committee had exercised the power of review without being empowered for the same under the statute or that it had exercised it erroneously.

12. There is no dispute that the appellant was given a notice of hearing. There is also no dispute that the appellant did not produce any evidence as to how his registration in Sikkim was a valid registration. This is because there was no dispute that he stayed in Sikkim just for a few months, and he has himself contended that he did not have any documentary evidence to claim that he stayed in Sikkim for five years, or that he had the necessary experience of not less than five years of work in dispensing medicines in Sikkim. This is because at the highest, his case with respect to his qualification was one under Section 31 sub-clause (d) of the Act.

13. It is true that section 32 of the Act does entitle a registered pharmacist in one State to have his name entered in the register of another State. Section 33 of the Act, however, gives the power of scrutiny to the State Council and every enrolment is subject to the scrutiny. Thereafter, if the State Council receives any complaint concerning the eligibility of a person to function as a pharmacist, the Executive Committee of the Council does have the power to make necessary enquiry under Section 36 of the Act, and if satisfied, to remove the name of such a registered pharmacist though after giving him a reasonable opportunity of being heard. Sub-section (i) of Section 36 (1) gives the grounds on which a name can be removed from the register. In the instant case, the Executive Committee was satisfied that there was an error in enrolling the appellant as a registered pharmacist. At that stage, the appellant has been called upon to give his explanation. In this enquiry, one State Council can certainly look into the prima-facie material on the basis of which registration was granted in another State. This is because the State Council is given the power to scrutinize such applications, and if such registration has been permitted by any error to that extent, it can certainly take the corrective step. Such a decision cannot amount to sitting in appeal over the decision of another State's Council. This is because the concerned State Council is answerable to the persons purchasing the medicines from the pharmacists in the State. It is its duty to see that pharmacists do have necessary educational qualifications or the experience as required. In a country where there is so much illiteracy, the requirements concerning educational qualifications or experience of the pharmacist have to be scrupulously scrutinized. If the registration of the concerned pharmacist obtained from another state does not appear to be a justified registration, the transferee State Council can certainly decline to accept that registration for the purpose of carrying on the profession of a pharmacist in the transferee State, or cancel such registration once effected. Such scrutiny is permissible at the time of initial registration, and also later when complaints are received, leading to the enquiry for the purpose of removal from their register.

14. It was submitted on behalf of the appellant that in the instant case, the act did not provide a solution to this type of problem. The appellant relied upon the judgment of this Court in *Maruti Wire Industries Pvt. Ltd. Vs. S.T.O. 1st Circle, Mattancherry* reported in 2001 (3) SCC 735 to submit that where the Legislature was silent about any particular aspect, the same could not be supplied by judicial interpretative process. As seen above, in the instant case, the provisions of the Act are sufficiently clear, and therefore, the actions of the respondent could not be faulted.

15. The purpose of a welfare statute cannot be permitted to be defeated by the methods such as the one employed by the appellant. As stated earlier, the Act is passed for making better provisions for the regulation of the profession and practice of pharmacy. As is seen, the primary qualification for such a person is to have a degree or diploma in pharmacy. It is only as an alternative qualification that some other degree with three years experience is permitted. The last alternative qualification is that of five years experience in dispensing drugs which has to be in the concerned State. This is because under Section 31 of the Act, the person who wants to be registered as a pharmacist has to be of 18 years of age, and he has to reside and carry on the business or profession of pharmacy in that particular state. The State Pharmacy Council which issues the certificate of registration ought to satisfy itself that the person concerned did have atleast five years of experience, and which experience has obviously to be in that State for the State Council to assess it. In the instant case, the appellant did not reside or carry the business or profession of pharmacy or dispensing of drugs in Sikkim for more than five years. If any such method, as adopted by the appellant is permitted, persons who claim to have experience of five years in one State, will go to another State for a few months only to obtain registration in that State, and thereafter seek transfer of that registration to their own state. In the instant case, the first respondent did not have any opportunity to examine as to whether the appellant did have the experience of five years in Rajasthan. The only submission of the appellant is that the papers which concerned the so-called experience were submitted to the Sikkim Tribunal alongwith the certificate of employer of the appellant in Sikkim where he worked for just two months. The consequences of accepting appellant's plea will mean that the transferee State will have to accept a person as a pharmacist when it did not have the opportunity to examine the material with respect to his experience of more than five years. The requirement of five years experience in the registering State will be defeated if any such methods are permitted.

16. In the circumstances, we do not find any error in the decision of the first respondent in canceling registration of the appellant, nor the decision of the Single Judge as well that of the Division Bench approving the same.

17. We therefore, pass the following order:

- (a) The Civil Appeal is, hereby dismissed.
- (b) There will be no order as to costs.