



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 4231/2021

Ravi Bhushan Puri Son Of Shri Rajendra Pal Puri, Aged About 80 Years, Resident Of 60/182, New Sanganer Road, Mansarovar, Jaipur.

-----Petitioner

Versus

1. The Union Of India, Through Its Secretary, Health Department (Ministry Of Health And Family Welfare), Nirman Bhawan, New Delhi.
2. Pharmacy Council Of India, Through Its Registrar-Cum-Secretary, NBCC Center, 3rd Floor, Plot No. 2, Community Center, Maa Anandmai Marg, Okhla Phase-I, New Delhi-110020.
3. Rajasthan Pharmacy Council, Through Its Registrar, Government Dispensary Campus, Sardar Patel Marg, Jaipur.

-----Respondents

For Petitioner(s) : Mr.R.K.Mathur, Sr.Advocate assisted by Mr.Aditya Kiran Mathur, Advocate.
For Respondent(s) : Ms.Anuradha Upadhyay, Mr.Amrit Kumar Surolia & Mr.Aditya Surolia, Advocates.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

20/10/2022

REPORTABLE

This writ petition has been filed by the petitioner challenging the communications/letters dated 27.11.2020 (wrongly typed as 27.11.2019 in the writ petition), 04.12.2020 and 04.06.2021 whereby the respondent-Pharmacy Council of India has not accepted the nomination of the petitioner to represent the



Rajasthan Pharmacy Council in the Central Council-Pharmacy Council of India.

2. The petitioner also prays for issuing a Notification notifying that the petitioner is a representative of the Rajasthan Pharmacy Council to represent in Pharmacy Council of India under Section 3(g) of the Pharmacy Act, 1948 (hereinafter referred to as "the Act of 1948").

3. The facts, in nutshell, as pleaded in the writ petition are that the petitioner is a registered Pharmacist with the Rajasthan Pharmacy Council in terms of Section 32(1)(a) of the Act of 1948 having registration No.7895 dated 31.07.1986. The petitioner is having the membership of the Rajasthan Pharmacy Council from 1987 to 31.12.2027, except for the period from 2008 to 2013. The petitioner also remained Vice President of the Rajasthan Pharmacy Council from 1987 to 1991 and thereafter elected as President, Rajasthan Pharmacy Council from 1991 to 1997 and further the petitioner remained President of the Rajasthan Chemists Association since 1984.

4. The petitioner has pleaded in the writ petition that the Act of 1948 under Chapter-II Section 3 provides for constitution and composition of Central Council known as the Pharmacy Council of India and as per Section 3(g) of the Act of 1948 each State Pharmacy Council has to elect one member (from amongst themselves), who shall be a registered Pharmacist, as its representative in the Pharmacy Council of India.



5. The petitioner has pleaded that one incumbent–Mr.Ajay Phatak who had a term of five years ceased to be a member of the Rajasthan Pharmacy Council on 20.07.2019 and as such, in his place, new member was to be elected to represent the Rajasthan Pharmacy Council in the Pharmacy Council of India.

6. The petitioner has pleaded that General Body meeting of the Rajasthan Pharmacy Council was held on 29.07.2020 and in the said meeting, the petitioner was elected to represent the Rajasthan Pharmacy Council in the Pharmacy Council of India and accordingly, due intimation was given to the Secretary, Pharmacy Council of India by letter dated 29.07.2020 regarding election of the petitioner as Member, Pharmacy Council of India to represent the Rajasthan Pharmacy Council. The petitioner has pleaded that on the same day i.e. 29.07.2020, the Rajasthan Pharmacy Council also informed the Pharmacy Council of India to provide all privileges to the petitioner in place of the earlier incumbent Mr.Ajay Phatak.

7. The petitioner has pleaded that the Pharmacy Council of India sent a letter dated 30.07.2020 to the Registrar, Rajasthan Pharmacy Council and asked them to forward the pharmacy registration certificate and qualification certificate of the petitioner and in response thereto, the Registrar, Rajasthan Pharmacy Council vide letter dated 04.08.2020, forwarded the desired documents.

8. The petitioner has pleaded that in spite of sending the letter dated 04.08.2020 by the Rajasthan Pharmacy Council, when the

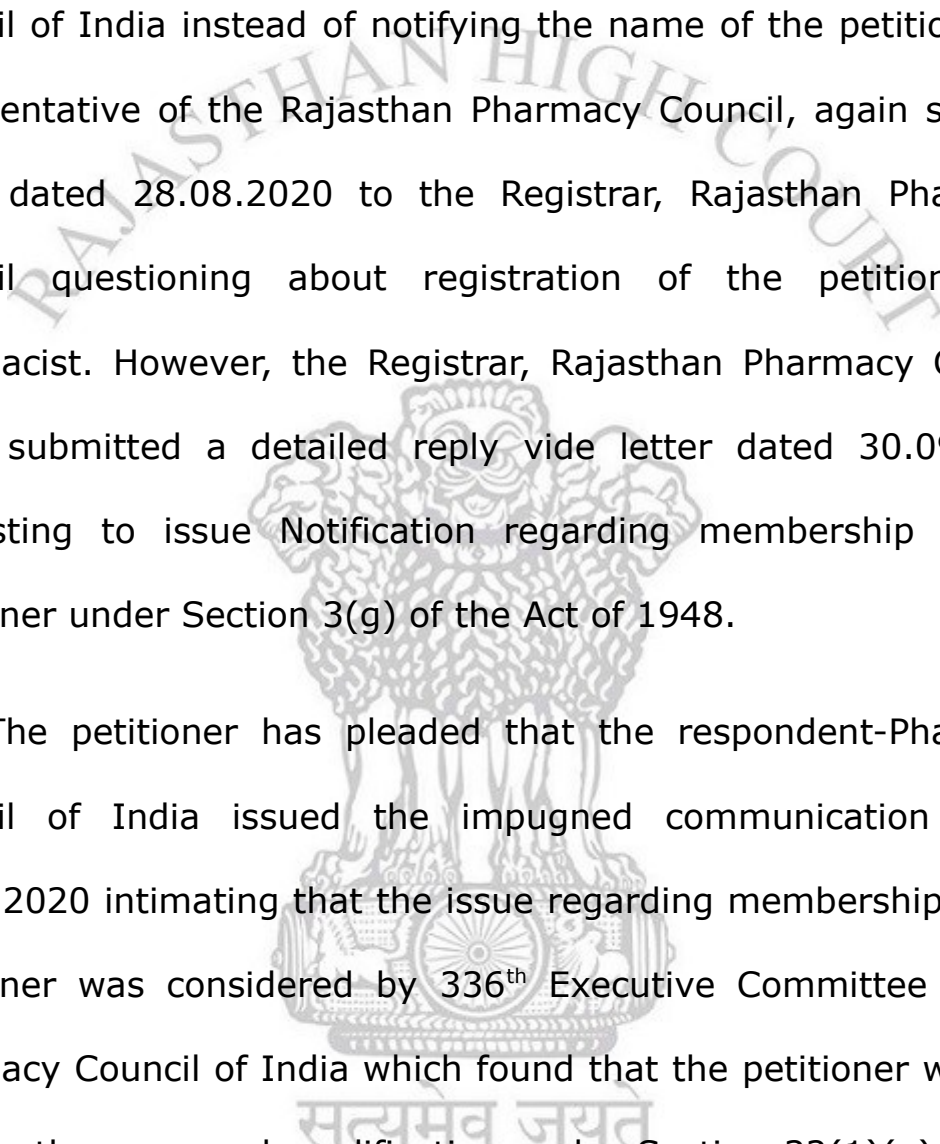


name of the petitioner did not find place as representative of the Rajasthan Pharmacy Council, the Registrar, Rajasthan Pharmacy Council vide letter dated 25.08.2020 requested the Pharmacy Council of India to notify the name of the petitioner as Member under Section 3(g) of the Act of 1948 without further delay.

9. The petitioner has pleaded that the respondent-Pharmacy Council of India instead of notifying the name of the petitioner as representative of the Rajasthan Pharmacy Council, again sent an email dated 28.08.2020 to the Registrar, Rajasthan Pharmacy Council questioning about registration of the petitioner as Pharmacist. However, the Registrar, Rajasthan Pharmacy Council again submitted a detailed reply vide letter dated 30.09.2020 requesting to issue Notification regarding membership of the petitioner under Section 3(g) of the Act of 1948.

10. The petitioner has pleaded that the respondent-Pharmacy Council of India issued the impugned communication dated 27.11.2020 intimating that the issue regarding membership of the petitioner was considered by 336th Executive Committee of the Pharmacy Council of India which found that the petitioner was not holding the approved qualification under Section 32(1)(a) of the Act of 1948 and his nomination was not found in accordance with the provisions of the Act of 1948.

11. The petitioner has pleaded that by another communication dated 04.12.2020, the Pharmacy Council of India again reiterated that the petitioner was not holding the approved qualification and



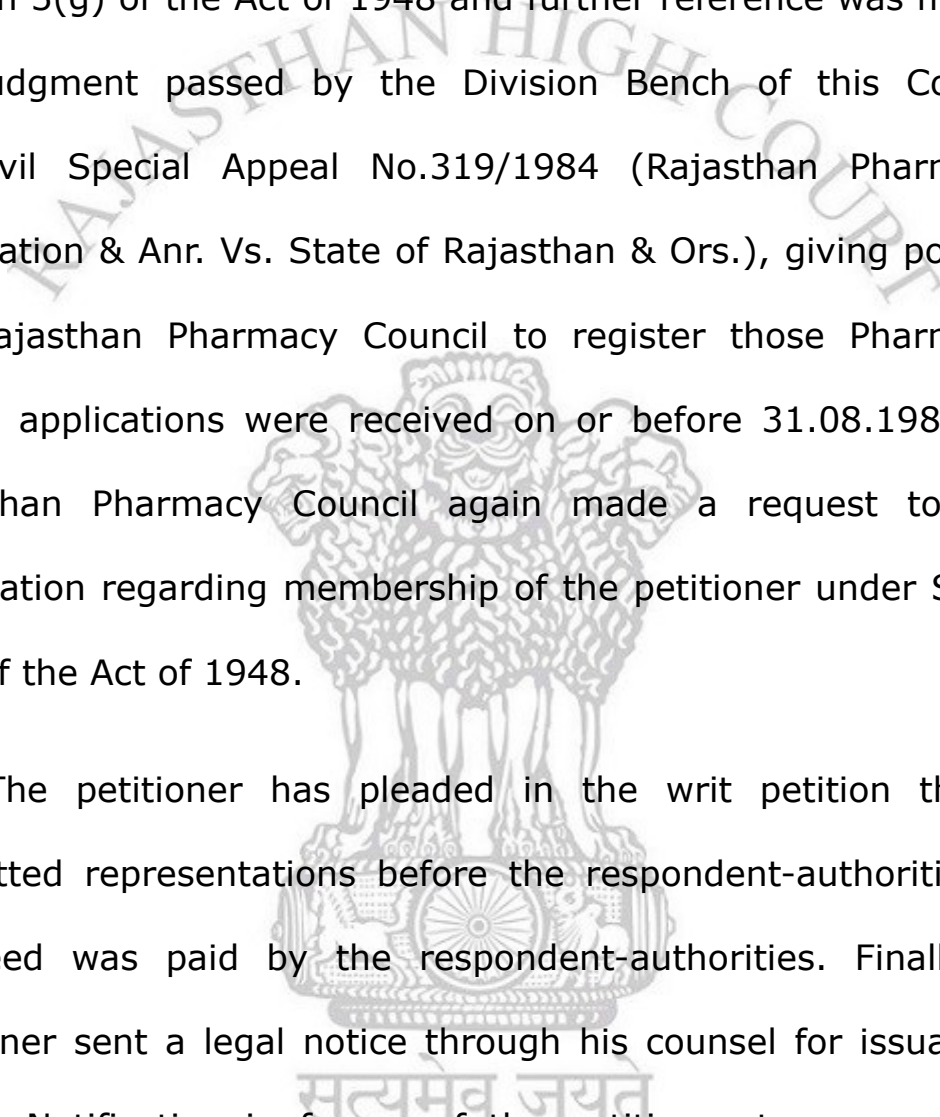


his nomination was not in accordance with the provisions of the Act of 1948.

12. The petitioner has further pleaded that the Registrar, Rajasthan Pharmacy Council informed the Pharmacy Council of India that they had no power to negate the registration of the petitioner as a Pharmacist or to deny his registration under Section 3(g) of the Act of 1948 and further reference was made of the judgment passed by the Division Bench of this Court in D.B.Civil Special Appeal No.319/1984 (Rajasthan Pharmacists Association & Anr. Vs. State of Rajasthan & Ors.), giving power to the Rajasthan Pharmacy Council to register those Pharmacists whose applications were received on or before 31.08.1981. The Rajasthan Pharmacy Council again made a request to issue Notification regarding membership of the petitioner under Section 3(g) of the Act of 1948.

13. The petitioner has pleaded in the writ petition that he submitted representations before the respondent-authorities but no heed was paid by the respondent-authorities. Finally, the petitioner sent a legal notice through his counsel for issuance of proper Notification in favour of the petitioner to represent the Rajasthan Pharmacy Council in the Pharmacy Council of India.

14. The respondent-Pharmacy Council of India, after issuance of notice in the writ petition, filed an additional affidavit and placed on record communication dated 04.06.2021 whereby the issue of membership of the petitioner was again considered by the Executive Committee in its 346th meeting held in May, 2021 and it





was found that the petitioner did not fulfill the prescribed requirement for registration as a Pharmacist and as such, the nomination of the petitioner was not accepted.

15. The petitioner filed amendment application in the writ petition and permission was granted to amend the writ petition, as such, the amended writ petition was filed and the petitioner in the amended writ petition, has challenged the communication dated 04.06.2021.

16. Learned Senior Counsel Mr.R.K.Mathur appearing for the petitioner has made following submissions while assailing the action of the respondents:-

16A. The impugned communications and decision of the Pharmacy Council of India, declining election of the petitioner as representative of the Rajasthan Pharmacy Council in the Pharmacy Council of India, on the ground of not holding the approved qualification under Section 32(1) (a) of the Act of 1948, is *ex-facie* illegal, arbitrary and against the provisions of the Act of 1948.

16B. The General Body meeting of Rajasthan Pharmacy Council held on 29.07.2020 had elected the petitioner as Member under Section 3(g) of the Act of 1948 to represent the Rajasthan Pharmacy Council and due intimation was also sent by the Rajasthan Pharmacy Council about petitioner's eligibility and his registration as Pharmacist, the Pharmacy Council of India has no power to negate the registration of the petitioner as Pharmacist.



16C. The petitioner has duly been registered, as per the qualification prescribed under Section 31(d) of the Act of 1948 and his name being entered in the register, as per Section 32 of the Act of 1948, the respondent-Pharmacy Council of India has no power to question the eligibility of the petitioner.

16D. The petitioner was registered as a Pharmacist, as he had submitted his application before the cut-off date, fixed by the Division Bench of this Court and the Rajasthan Pharmacy Council, was fully satisfied about eligibility of the petitioner, Pharmacy Council of India cannot treat him as a 'Pharmacist wrongly registered' with the Rajasthan Pharmacy Council or not having the requisite qualification, as prescribed under Section 31(d) of the Act of 1948.

16E. The power, if any, available for removal of name of the person-petitioner, as a registered Pharmacist, can only be invoked, as per Section 36 of the Act of 1948 by the Executive Committee and such power has not been exercised by the Rajasthan Pharmacy Council, even after receiving communication from the Pharmacy Council of India, on the ground of ineligibility of the petitioner or lack of qualification, as prescribed under the Act of 1948, therefore, no such power is vested with the Pharmacy Council of India to refuse to accept the nomination of the petitioner to represent the Rajasthan Pharmacy Council in the Pharmacy Council of India.



17. The respondent-Pharmacy Council of India has filed counter affidavit and pleaded that after entering into various correspondences with the Rajasthan Pharmacy Council and receiving information about eligibility and registration of the petitioner, a meeting was held of the Executive Committee of Pharmacy Council of India on 12.11.2020 and it was decided that the petitioner was not holding the approved qualification prescribed under Section 32(1)(a) of the Act of 1948 and as such, the nomination of the petitioner was not in accordance with the provisions of the Act of 1948.

18. The respondent-Pharmacy Council of India has pleaded that after receipt of legal notice from the counsel of the petitioner, the matter was again placed before the 44th Law Committee meeting of the Pharmacy Council of India on 24.02.2021 regarding registration of the petitioner and it was decided to ask the Registrar of the Rajasthan Pharmacy Council to file certain information. The recommendation of the Law Committee was placed in the Executive Committee of the Pharmacy Council of India and thereafter decision was taken not to accept the nomination of the petitioner as he did not fulfill the prescribed requirement for registration as a Pharmacist.

19. The respondent-Pharmacy Council of India, after amendment of the writ petition, has filed another counter affidavit and has reiterated the contentions which were raised earlier.

20. The counsel appearing for the respondent-Pharmacy Council of India, Mrs.Anuradha Upadhyay has submitted as under:-



20A. The Pharmacist Council of India is the Apex Body and it is duty bound to verify the eligibility of any person for registration as a Pharmacist and it has to ensure that only eligible and qualified persons are registered as Pharmacists and enter in the profession which is related to public health.

20B. The petitioner did not fulfill the qualification for entering his name in the first register as prescribed under Section 31(d) of the Act of 1948. The documents relating to working of the petitioner in a dispensary where drugs are dispensed on prescriptions, the petitioner was not having the prescribed five years experience on the submission of his application to the Rajasthan Pharmacy Council on 29.08.1981 and he was having only three years and one month experience and he is also alleged to be working with one Hansa Medical Hall which was not licensed under the Drugs and Cosmetics Act for dispensing all medicines on the prescription of Medical Practitioners.

20C. The Pharmacy Council of India being Apex Body will not induct any member of State Council who is not a registered Pharmacist in a proper manner and lacking the requisite qualification and the Pharmacy Council of India has every right to consider his eligibility and qualification of any member to represent any State Pharmacy Council, even after he is elected, by the State Pharmacy Council.

20D. Under Section 7 of the Act of 1948, the act of the respondent-Pharmacy Council of India cannot be called in





question merely because of the existence of any vacancy, if the properly nominated person is not available to fill the vacancy and as such, its action is immune from judicial scrutiny.

20E. Section 45 of the Act of 1948 gives power of appointment of commission of enquiry and the Pharmacy Council of India has every right to question the eligibility of any member and hold enquiry in the matter.

21. The respondent-Rajasthan Pharmacy Council has filed reply to the writ petition and pleaded that the petitioner was duly elected to represent the Rajasthan Pharmacy Council as a member before the Pharmacy Council of India.

22. The respondent-Rajasthan Pharmacy Council has pleaded that they in response to the various queries raised by the Pharmacy Council of India, they replied back and had sent all the requisite documents relating to registration of the petitioner as Pharmacist. The respondent-Rajasthan Pharmacy Council has also placed on record the various documents which were submitted by the petitioner at the time of registration.

23. Counsel for the respondent-Pharmacy Council of India, in support of her submissions, placed reliance on the judgment rendered by the Apex Court in the case of **Pharmacy Council of India Vs. Dr.S.K.Toshniwal Educational Trusts Vidarbha Institute of Pharmacy & Ors.** reported in **(2021) 10 SCC 657.**

24. I have heard learned counsel for the parties and with their assistance perused the material available on record.





25. The core issue to be decided by this Court in the present case is with regard to power of Pharmacy Council of India to refuse to accept one member of a State Pharmacy Council, who is elected by them and is duly registered with them.

26. This Court, before proceeding further in the matter, deems it proper to quote the relevant provisions of the Act of 1948, which read ad infra:-

"3. Constitution and composition of Central Council.— The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely:—

(a) to (f) XX XX XX.

(g) one member to represent each State elected [from amongst themselves] by the members of each State Council, who shall be a registered pharmacist;

7. Term of office and casual vacancies.—(1) to (4) XX XX

(5) No act done by the Central Council shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Central Council.

19. Constitution and composition of State Councils.— Except where a Joint State Council is constituted in accordance with an agreement made under Section 20, the State Government shall constitute a State Council consisting of the following members, namely:—

(a) six members, elected from amongst themselves by registered pharmacists of the State;

(b) five members, of whom at least [three] shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or [registered pharmacists], nominated by the State Government;

(c) one member elected from amongst themselves by the members of each Medical Council or the Council of Medical Registration of the State, as the case may be;

(d) the chief administrative medical officer of the State *ex-officio* or if he is unable to attend any meeting, a person authorised by him in writing to do so;

[(dd) the officer-in-charge of drugs control organisation of the State under the [Drugs and Cosmetics Act, 1940 (23 of 1940)], *ex officio* or if he is unable to attend any meeting, a person authorised by him in writing to do so;]



(e) the Government Analyst under the [Drugs and Cosmetics Act, 1940 (23 of 1940)], *ex officio*, or where there is more than one, such one as the State Government may appoint in this behalf:

Provided that where an agreement is made under clause (b) of sub-section (1) of section 20, the agreement may provide that the State Council to serve the needs of the other participating States also shall be augmented by not more than two members, of whom at least one shall at all times be a person possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or a [registered pharmacist], nominated by the Government of each of the said other participating States, and where the agreement so provides, the composition of the State Council shall be deemed to be augmented accordingly.

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 application 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 under section 31, shall direct the entry of 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 decision 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 dispensed 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. Qualifications for subsequent registration.—(1) After the date appointed under sub-section (2) of section 30 and before the Education Regulations have, by or under section 11, taken effect in the State, 3 [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) satisfies 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,

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 person employed by him for the purposes of his business of pharmacy 2 [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 the offence is an offence under the [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 him [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 of registration to the Registrar, and the name so removed shall be published in the Official Gazette.

45. Appointment of Commission of Enquiry.—(1) Whenever it appears to the Central Government that the Central Council is not complying with any of the provisions of this Act, the Central Government may appoint a Commission of Enquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being the Judge of a High Court, and one by the Council; and refer to it the matters on which the enquiry is to be made.

(2) The Commission shall proceed to enquire in such manner as it may deem fit and report to the Central Government on the matters referred to it together with such remedies, if any, as the Commission may like to recommend.

(3) The Central Government may accept the report or remit the same to the Commission for modification or reconsideration.

(4) After the report is finally accepted, the Central Government may order the Central Council to adopt the remedies so recommended within such time as may be specified in the order and if the Council fails to comply within the time so specified, the Central Government may pass such order or take such action as may be necessary to give effect to the recommendations of the Commission.

(5) Whenever it appears to the State Government that the State Council is not complying with any of the provisions of this Act, the State Government may likewise appoint a similar Commission of Enquiry and pass such order or take such action as specified in sub-sections (3) and (4).

27. This Court on perusal of various provisions of the Act of 1948 finds that the Pharmacy Council of India consists of different members and as per Section 3(g) of the Act of 1948, there has to be one member to represent each State elected (from amongst themselves) by the members of each State Council, who is required to be a registered Pharmacist.

28. This Court finds that for registration of a Pharmacist, the qualifications have been prescribed in Section 31 of the Act of 1948 and a person possessing any of the qualifications, prescribed therein, can have his name entered in the first register.





29. This Court finds that the Act of 1948, after preparation of the first register for entering the name of registered Pharmacist, under Section 32 of the Act of 1948, provides qualifications for subsequent registration.

30. The facts, as have come on record, demonstrate that the petitioner was registered as a Pharmacist by the Rajasthan Pharmacy Council on 31.07.1986 under Section 32(1)(a) of the Act of 1948. This Court finds that the issue with regard to registration of Pharmacist in the State of Rajasthan was settled by the judgment of the Division Bench of this Court vide judgment dated 01.04.1986 passed in D.B.Civil Special Appeal No.319/1984 (Rajasthan Pharmacists Association & Anr. Vs. State of Rajasthan & Ors.) and the Division Bench of this Court came to the conclusion that all the applications which had been received upto 31.08.1981, were to be decided by the State Council in accordance with the relevant Rules and Regulations.

31. This Court finds that the petitioner in the present case submitted an application before the cut-off date i.e. on 29.08.1981 and as such, his name was entered in the register of Pharmacist maintained by the Rajasthan Pharmacy Council under Section 32(1)(a) of the Act of 1948.

32. This Court finds that registration of the petitioner as Pharmacist is still in vogue and the same has been renewed upto 31.12.2027. This Court finds that the General Body meeting of the Rajasthan Pharmacy Council was convened on 29.07.2020 and the petitioner was elected to represent the Rajasthan Pharmacy





Council as a member before the Pharmacy Council of India and till date his name has not been removed from the register maintained by the Rajasthan Pharmacy Council and no proceedings under Section 36 of the Act of 1948, have been undertaken, questioning the registration of the petitioner as a registered Pharmacist on any of the grounds, which have been enumerated for removing the name of a person from the register, like entering the name in the register by error or on account of misrepresentation or suppression of a material fact.

33. This Court finds that the respondent-Pharmacy Council of India in various communications have communicated to the Rajasthan Pharmacy Council that qualification held by the petitioner was not approved qualification prescribed under Section 32(1)(a) of the Act of 1948 and his nomination is not said to be in accordance with the provisions of the Act of 1948.

34. This Court finds that composition of the Pharmacy Council of India needs to have one member representing each State, elected by the members of State Council, who is a registered Pharmacist and as such, there is no dispute that the petitioner was duly elected by the General Body meeting of the Rajasthan Pharmacy Council and on the date he was elected, he was a registered Pharmacist as well.

35. The plea raised by the Pharmacy Council of India that the petitioner did not hold the approved qualification under Section 31(1)(a) of the Act of 1948 and his nomination is not in accordance with the provisions, cannot be accepted by this Court



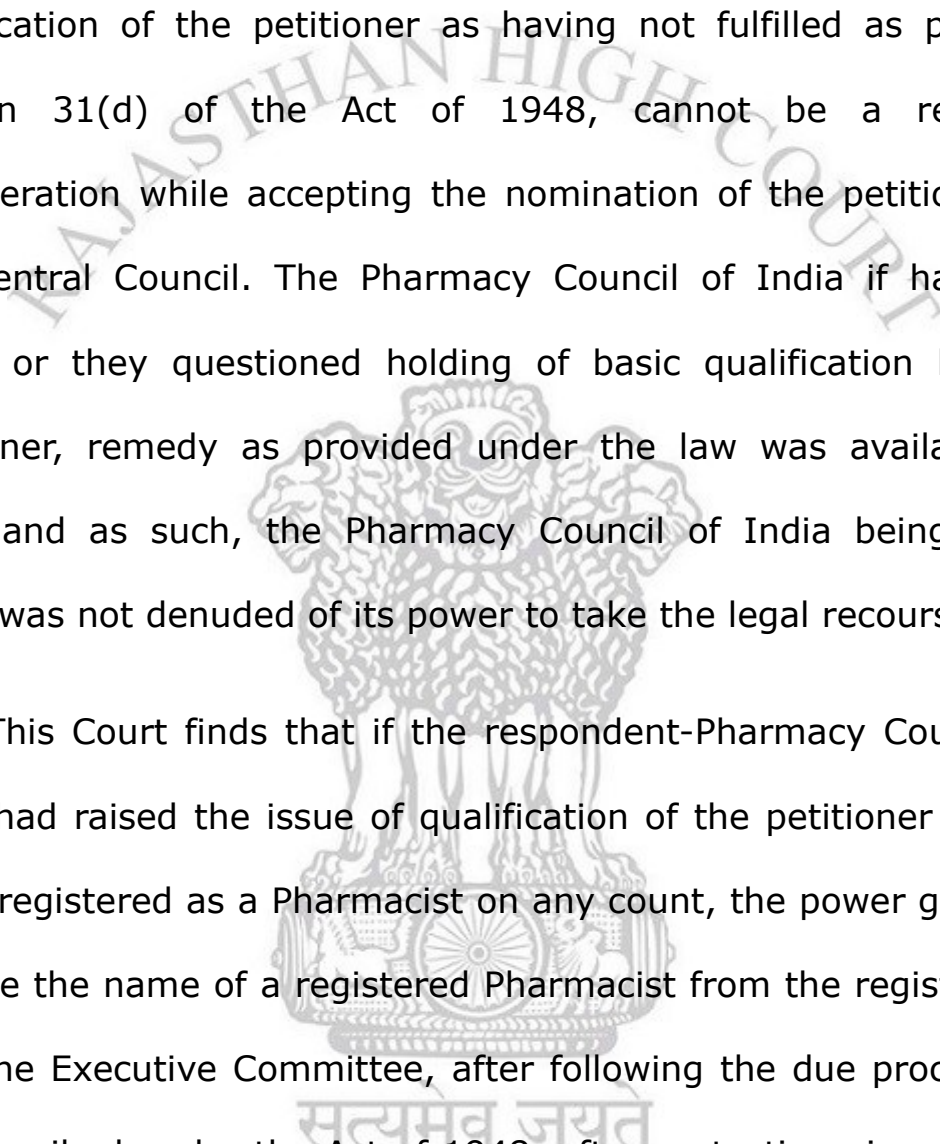


as once a member is elected by the State Pharmacy Council and he is a registered Pharmacist and if the twin conditions are fulfilled by a candidate, then denial to induct such candidate will be in violation of composition of Central Council i.e. Pharmacy Council of India, as has been envisaged under Section 3 of the Act of 1948.

36. The action of Pharmacy Council of India in questioning the qualification of the petitioner as having not fulfilled as per the Section 31(d) of the Act of 1948, cannot be a relevant consideration while accepting the nomination of the petitioner in the Central Council. The Pharmacy Council of India if had any doubt or they questioned holding of basic qualification by the petitioner, remedy as provided under the law was available to them and as such, the Pharmacy Council of India being Apex Body, was not denuded of its power to take the legal recourse.

37. This Court finds that if the respondent-Pharmacy Council of India had raised the issue of qualification of the petitioner as not being registered as a Pharmacist on any count, the power given to remove the name of a registered Pharmacist from the register lies with the Executive Committee, after following the due procedure, as prescribed under the Act of 1948, after protection given to the person concerned, it is always open to the authorities to exercise their power as provided under the law.

38. This Court finds that registration as a Pharmacist and removal of name from register, is duly regulated under the provisions of the Act of 1948.





39. This Court finds that the Apex Court in the case of **Rajendra Prasad Bagaria Vs. Pharmacy Council of State of Rajasthan & Ors.** reported in **(2012) 3 SCC 212**, has dealt with the power given to the State Pharmacy Council to exercise its power as provided under Section 36 of the Act of 1948 and to see that Section 32 of the Act of 1948 entitles a registered Pharmacist to practice. The extract of the judgment, being relevant for the present controversy, is reproduced hereunder:-



"17. 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.

18. 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.

19. 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.

20. 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. 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.

21. 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.

22. 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."





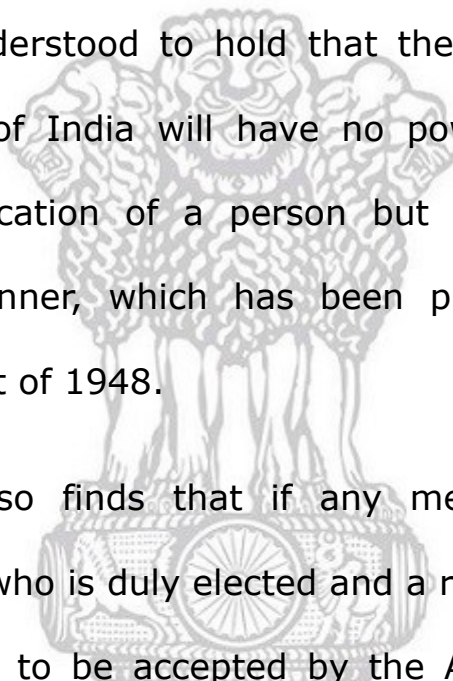
40. The contention of learned counsel for the respondent that the Pharmacy Council of India being the Apex Body has every right to consider the eligibility of any member even if he is elected by the State Pharmacy Council and registered Pharmacist as well and if ineligible and disqualified person is recommended, then the Pharmacy Council of India has its own power to refuse to accept such nomination, suffice it to say by this Court that the Pharmacy Council of India can exercise its power, however, for removal of a person as a Pharmacist from the register which is maintained for registered Pharmacist, the same has to be exercised in the manner, which is prescribed under the law. However, this Court may not be misunderstood to hold that the Central Council i.e. Pharmacy Council of India will have no power to question the eligibility or qualification of a person but such power can be exercised in a manner, which has been prescribed under the provisions of the Act of 1948.

41. This Court also finds that if any member of the State Pharmacy Council, who is duly elected and a registered Pharmacist as well, is declined to be accepted by the Apex Body, then the same would result into defeating the very purpose of composition of Central Council and it would also be against the democratic right which is given to the State Pharmacy Council to elect its own member to represent them in the Central Council.

42. The submission of learned counsel for the respondent- Pharmacy Council of India that sub-section (5) of Section 7 of the Act of 1948 gives them immunity and their action cannot be called in question, this Court is afraid to accept such submission as



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Section 7 of the Act of 1948 deals with term of office and casual vacancies and sub-section (5) of Section 7 of the Act of 1948 only protects the act of Central Council if it works in spite of existence of any vacancy or full quorum is not there. This Court finds that in the present case, the action of the Central Council is not challenged on account of leaving any vacancy unfilled and the issue before this Court is with respect to non-acceptance of the petitioner as a member of the Central Council-Pharmacy Council of India in spite of recommendation in his favour by the Rajasthan Pharmacy Council.

43. The submission of learned counsel for the respondent-Pharmacy Council of India that Section 45 of the Act of 1948 provides for appointment of Commission of Enquiry and the Pharmacy Council of India has accordingly exercised its power, this Court is afraid to accept such submission of learned counsel for the respondent as the said Section is not applicable at all in the present facts of the case and moreover it is the power of Central Government to appoint a Commission of Enquiry if the Central Council is not complying with any of the provisions of the Act of 1948 and as such, Section 45 of the Act of 1948 is not attracted to the facts of the present case.

44. As regards reliance placed by counsel for the respondent on the case of **Pharmacy Council of India Vs. Dr.S.K.Toshniwal Educational Trusts Vidarbha Institute of Pharmacy & Ors.** (supra), this Court finds that the issue in the said case before the Apex Court was with respect to applicability of the Act of 1948 vis-à-vis the provisions contained in All India Council of Technical



Education Act, 1987 (AICTE Act). The Apex Court came to the conclusion that AICTE Act is a general law applicable to technical institutions and technical education, whereas the Act of 1948 is a special Act in the field of Pharmacy and as such, the Act of 1948 was to prevail in respect of the qualifications, which were prescribed for Pharmacists and further their registration as Pharmacist and regulation of future professional conduct, etc. were the sole duty of the Pharmacy Council of India and not of AICTE. The said case has not application to the issue involved in the present case and the same is of no assistance.

45. This Court finds that the respondent-Pharmacy Council of India has not acted in a fair manner and as such, they have acted arbitrarily in refusing to accept induction of the petitioner as a member in the Central Council-Pharmacy Council of India.

46. This Court accordingly, sets aside the impugned communications dated 27.11.2020, 04.12.2020 and 04.06.2021 and directs that the petitioner is entitled to be inducted in the Central Council-Pharmacy Council of India as a representative of the Rajasthan Pharmacy Council and necessary Notification is also required to be issued accordingly by the respondent-Pharmacy Council of India. This Court further finds that the petitioner, who was elected in the year 2020 has almost lost two years of his term and as such, the respondent-Pharmacy Council of India will undertake the exercise of notifying the name of petitioner as representative of Rajasthan Pharmacy Council within a period of four weeks from the date of receipt of copy of this Court.



47. Consequently, the instant writ petition stands allowed in above terms.

(ASHOK KUMAR GAUR),J



Solanki DS, PS

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