

(2001) 11 KAR CK 0034

Karnataka High Court

Case No: Writ Appeal No"s. 7712 and 7713 of 2000

Pharmacy Council of
India, New Delhi and
Another

APPELLANT

Vs

Smt. Archana Patwari
and Others

RESPONDENT

Date of Decision: Nov. 23, 2001

Acts Referred:

- Pharmacy Act, 1948 - Section 31, 32

Citation: (2002) ILR (Kar) 22 : (2002) 3 KarLJ 178 : (2002) 1 KCCR 61 SN

Hon'ble Judges: N.K. Jain, C.J; N. Kumar, J

Bench: Division Bench

Advocate: S.S. Haveri, for the Appellant; M.N. Seshadri, Government Advocate and Udaya Holla, for the Respondent

Final Decision: Allowed

Judgement

N. Kumar, J.

The appellants Pharmacy Council of India and Karnataka State Pharmacy Council have challenged in these appeals the order of the learned Single Judge holding that the first respondent is eligible for being registered as a pharmacist with the Karnataka State Pharmacy Council and on such registration being made a certificate be issued to the first respondent in this behalf.

2. The facts in brief leading to this proceedings are as hereunder.--

The first respondent joined the B.Pharm course in the second respondent-college of pharmacy in the year 1989. The said college is affiliated to Gulbarga University. The first respondent completed B.Pharm course in the year 1993 in first class and she was given a degree certificate by the Gulbarga University. Subsequently, she joined a private firm

where she was working till the year 1996. The first respondent got married and her husband is working in U.S.A. When she was about to leave for U.S.A. she was informed that she must obtain a certificate from the Karnataka State Pharmacy Council as a registered pharmacist in order to enable her to practice as a pharmacist in United States. The first respondent approached the second appellant herein to issue a certificate as a registered pharmacist. The Registrar of the second appellant herein informed the first respondent that it is not possible to grant such a certificate as she is not a registered pharmacist and the third respondent college where she studied is not an approved college u/s 12 of the Act and she has not undergone the course which is approved by them. Therefore, she was constrained to file the writ petition for a writ of mandamus directing the second appellant herein to issue a certificate as a registered pharmacist under the Pharmacy Act, 1948 (hereinafter referred to as "the Pharmacy Act").

3. The writ petition was contested by the second appellant herein contending that the educational regulations have taken effect in Karnataka from August 1973, as per Section 11 of the Pharmacy Act and therefore the registration of names is to be as per Section 32 of the Pharmacy Act. The first respondent does not fulfil the conditions prescribed under the said section. The college in which the first respondent has studied is not a college approved by the Pharmacy Council as such the course undergone by her and the examination conducted by the second respondent-college are not approved course of study and approved examination. Therefore, they contended the first respondent is not entitled to be registered as a pharmacist.

4. The first appellant also filed objections contending it is they who approve the degree course for the purpose of registration as a pharmacist. The first respondent was admitted to B.Pharm course in 1989 and passed out in 1993 during which period the said course was not approved u/s 12 of the Act and therefore she is not eligible for registration as a pharmacist as she has undergone an unapproved course of study. Therefore, they prayed that the writ petition be dismissed.

5. Though the college was made a party to the proceedings they did not choose to file their statement.

6. The learned Judge after considering the rival contentions of the parties came to the conclusion that the B.Pharm degree was awarded to the first respondent by a recognized University and therefore she satisfies the requirement of Section 32(1)(a) of the Pharmacy Act and is eligible for registration for the first time u/s 31 of the Act. Therefore, a direction was issued to the second appellant herein to register the first respondent as a pharmacist and issue a certificate to her. It is against the said order, the appellants have preferred these writ appeals.

7. Learned Counsel Sri S.S. Haveri appearing for the appellants submitted it is no doubt true that the second respondent-college has been affiliated to Gulbarga University and the University has issued a B.Pharm degree in favour of the first respondent. However,

as the B.Pharma course conducted by the second respondent-college and the examination held for the said course is not approved by the Central Council, which is a condition precedent for entering the name of the first respondent in the register, the learned Single Judge could not have given the impugned direction. The finding of the learned Single Judge that the first respondent satisfies the condition prescribed u/s 32(2)(a) of the Pharmacy Act is erroneous as the said qualification applies to a case where a person satisfies the conditions prescribed therein after the date indicated in Sub-section (2) of Section 30 and before the education regulations have taken effect in the State and is not applicable to a case of a person who holds a degree conferred after the education regulations have come into effect and therefore he contends that the impugned order is liable to be set aside.

8. Learned Counsel appearing for the first respondent-student submits the education regulations of 1972 relied on by the appellants are regulations framed for diploma course in pharmacy u/s 7 of the Pharmacy Act. Even to this day no education regulations have been framed for a degree in B.Pharma. In the absence of any such regulations for degree in B.Pharma the qualifications prescribed u/s 31 of the Pharmacy Act are attracted. Secondly, the case falls u/s 32(1) of the Pharmacy Act and not Section 32(2) of the Pharmacy Act as contended by the appellants and in that view of the matter the order of the learned Single Judge is unexceptionable and prays for dismissal of the writ appeals.

9. In view of the aforesaid rival contentions the point that arises for our consideration is, Whether the appellants were justified in refusing registration as a pharmacist, on the ground that B.Pharma course and the examination passed by the first respondent is not approved by them u/s 12 of the Pharmacy Act.

10. In order to answer the aforesaid point it is necessary to have a look at the scheme of the Pharmacy Act.

11. Pharmacy Act was passed to make better provision for the regulation of the profession and practice of pharmacy and for that purpose to constitute Pharmacy Councils. The statement of objects and reasons makes it clear to establish a Central Council of Pharmacy which will prescribe the minimum standards of education and approved courses of study and examination for pharmacists, and Provincial Pharmacy Councils which will be responsible for the maintenance of provincial registers of qualified pharmacists and to prohibit the dispensing of medicine on the prescription of a medical practitioner otherwise than by, or under the direct and personal supervision of a registered pharmacist, the Pharmacy Act was promulgated.

12. Section 10 of the Pharmacy Act deals with education regulations and prescribe the minimum standard of education required for Qualification as a pharmacist. The Central Council with the approval of the Central Government has made regulations which is called Education Regulations of 1972 which is subsequently repealed and substituted by Education Regulations, 1SS1 for the diploma course in pharmacy which was also

repealed by the education regulations, 1991 for the diploma course in pharmacy which is in force now. No declaration is made regarding the date from which the education regulations shall take effect. By virtue of the proviso to Section 11, the education regulations shall take effect on the expiry of three years from the date of constitution of the State Council. The Mysore State Pharmacy Council was constituted by a Government Order dated 6-8-1970 and therefore the education regulations of 1972 came into effect from 6-8-1973. Section 12 deals with approved course of study and it reads as under.--

"12. Approved courses of study and examinations.--(1) Any authority in a State which conducts a course of study for pharmacists may apply to the Central Council for approval of the course, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the education regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the education regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the State which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the course of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination".

Section 29 of the Pharmacy Act provides for preparation of a register of pharmacists for the State and it sets out particulars to be entered in such register. Section 30 deals with preparation of first register. Subsection (3) of Section 30 states that 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 u/s 31, shall direct the entry of the name of the applicant on the register. The appointed date u/s 30(2) of the Pharmacy Act was 30-10-1961. Therefore, all the applications received prior to 30-10-1961 from those who possess the qualification prescribed u/s 31 are entered in the first register. Section 31 deals with qualifications for entry on first register which reads as hereunder.--

"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 recognized 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".

Section 32 deals with qualifications for subsequent registration which reads as under.--

"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 u/s 11, taken effect in the State, 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, or

(b) is a registered pharmacist in another State, or

(c) possesses a qualification approved u/s 14:

Provided that no person shall be entitled under Clause (a) or Clause (c) to have his name entered on the register unless he has passed a matriculation examination or an examination prescribed as being equivalent to a matriculation examination.

(2) After the Education Regulations have by or u/s 11 taken effect in the State, a person shall on payment of the prescribed fee be entitled to have his name entered on the register if he has attained the age of eighteen years, if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved u/s 14 or is a registered pharmacist in another State".

This section provides for two categories of registration. The first category is as contained in Section 32(1). All persons who have made application after the date appointed under Sub-section (2) of Section 30, namely 30-10-1961 and before the education regulations have by or u/s 11 taken effect in the State, namely 6-8-1973 and who satisfy the condition prescribed u/s 31 or who are registered pharmacists in another State or who possess a qualification approved u/s 14 are entitled to have their names entered in the register if they reside or carry on the business or profession of pharmacy in the State. Sub-section (2) of Section 32 state that a person who has passed an approved examination or possess a qualification approved u/s 14 or is a registered pharmacist of another State who has made an application after the education regulations have by or u/s 11 taken effect in the State is entitled to have his name entered on the register if he has attained the age of 18 years, if he resides or carries on the business or profession of pharmacist in the State. A conjoint reading of these sections make it very clear that the aforesaid provisions provide for three categories of persons who are entitled to have their names entered in the register.

They are, (a) persons who have made applications for registration before 30-10-1961 and who possess the qualification prescribed u/s 31;

(b) persons who have made application after 30-10-1961 and before 6-8-1973 when the Education Regulations of 1972 came into effect who have qualification prescribed u/s 31; and

(c) persons who have made applications subsequent to 6-8-1973 on-wards and who have passed an approved examination or possess a qualification approved u/s 14 or a registered pharmacist in another State.

The Pharmacy Act does not provide for education regulations for a degree in B.Pharm. Section 10 makes it explicitly clear that the regulations to be made by the Central Council with the approval of the Central Government is only prescribing the minimum standard of education required for qualification as a pharmacist. They have prescribed diploma in pharmacy as the minimum standard of education. A degree in pharmacy would be a higher qualification than the minimum that is prescribed u/s 10. Section 10 does not contemplate education regulations for a degree in B.Pharm or a Master's Degree in B.Pharm as it deals only with minimum standard of education. There is no necessity for the Central Council to pass regulations prescribing qualification for degree in B.Pharm. All that the law requires is they should make regulations prescribing the minimum standards of education required for qualification and once any course imparted by the college satisfies the minimum standard of education the said course of study would be approved by the Central Council for the purpose of admission to an approved examination for pharmacist. Therefore, the education regulations of 1972 for the diploma in pharmacy which was substituted by education regulations of 1981 for the diploma course in pharmacy which was later substituted by Education Regulations, 1991 for the diploma course in pharmacy, prescribes the minimum standard of education required for

qualification as pharmacists. The Central Council, if it is satisfied that the degree in B.Pharm course satisfies the aforesaid education regulations they would approve the course of study and they will also approve the examination for the purpose of qualifying for registration as pharmacist under the Act. All persons who have joined the degree in B.Pharm after 6-8-1973 when the education regulations came into effect and joined courses approved by the Central Council and passed examination approved by the Central Council would be entitled to have the names entered in the register. Those students who pass the course conducted by the various colleges which are affiliated to the Universities but those courses are not approved by the Central Council and pass the examination which are not approved by the Central Council are ineligible to have their names entered in the register. Therefore, the argument of the learned Counsel for the respondent that in the absence of education regulations providing the requisite qualification for a degree in B.Pharm the education qualifications for diploma course which prescribes the minimum standard of education is not applicable to the first respondent has no basis.

13. The undisputed facts are the first respondent obtained the degree in B.Pharm after the education regulations came into force. The B.Pharm course which she studied in the second respondent-college is not an approved course of study under the education regulations of 1972. The examination for B.Pharm course conducted by the Gulbarga University or the second respondent-college was not an approved examination for the purpose of qualifying for registration as a pharmacist. The B.Pharm course was approved by the second respondent herein only in the year 1994 much later than the first respondent obtained a degree in B.Pharm.

14. Neither the degree in B.Pharm course nor the examination conducted for the said course are approved by the Central Council u/s 12 of the Pharmacy Act. As the first respondent has joined the said course after the education regulations have come into effect unless she joins an approved course and passes an approved examination she is not entitled to have her name entered in the register u/s 32(2) of the Pharmacy Act. To such a person Section 32(1) has no application because Section 32(1) only deals with persons either who have made application or who have obtained a degree or diploma in pharmacy during the period 30-10-1961 i.e., after the date appointed under Sub-section (2) of Section 30 and before 6-8-1973 the date on which the education regulations have taken effect in the State. Therefore, the impugned order passed by the learned Single Judge holding that the case of the first respondent falls u/s 32(1) of the Pharmacy Act is not proper and consequently the direction issued to the appellants to enter the name of the first respondent in the register cannot be justified. Consequently, the impugned order is liable to be set aside and accordingly it is set aside. Hence, we pass the following:

ORDER

Writ appeals are allowed. The order of the learned Single Judge dated 14-9-2000 is set aside. Writ petition is dismissed. No costs.