

GAHC010051842024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1543/2024

DINESH TALUKDAR AND 16 ORS
(PHARMACIST REGISTRATION NO. 8895, 32(B))
S/O- LT. KAILASH TALUKDAR,
NALBARI TOWN (BARUAH ROAD),
PO- NALBARI, DIST- NALBARI,
PIN- 781335, ASSAM.

2: BIDHAN KANTI DEY
((PHARMACIST REGISTRATION NO. 7911
32(B))
S/O- LT. BARINDRA KR. DEY

DR. R.P. ROAD
GANESHGURI

P.O.- ASSAM SACHIVALAYA

PIN- 781006
ASSAM.

3: MINTU SINGH DEKA
((PHARMACIST REGISTRATION NO. 9182
32(B))
S/O- ARVIND KR. SINGH

BIRKUCHI
DIST.- KAMRUP(M)

PIN- 781026.

4: JAYANTA GANGULY
((PHARMACIST REGISTRATION NO. 9179
32(B))
S/O- LT. LAKSHMI NARAYAN GANGULY

JYOTI PATH
BYE LANE-3
WEST BHASKAR NAGAR-18

HOUSE NO. 59
GUWAHATI
DIST.- KAMRUP(M)

PIN- 781018
ASSAM.

5: SUDHANGSHU SEKHAR DUTTA
((PHARMACIST REGISTRATION NO. 4377
32(B))
S/O- LT. MOHINI DUTTA

M/S. MOHINI MEDICAL HALL
MAIN ROAD

P.O.- HOJAI
DIST.- HOJAI

PIN- 782435
ASSAM.

6: SUBHAMOY DUTTA
((PHARMACIST REGISTRATION NO. 4639
32(B))
S/O- LT. SASADHAR DUTTA

C/O- M/S GIRI MEDICAL HALL
MAIN ROAD

P.O.- HOJAI
DIST.- HOJAI
ASSAM

PIN- 782435.

7: NITYA SEAL
((PHARMACIST REGISTRATION NO. 10739
32(B))
C/O- LT. CHANA RANJAN SEAL

HOJAI TOWN
WARD NO. 3

NEAR BUNIYADI SCHOOL
P.O.- HOJAI

DIST.- HOJAI
PIN- 782435
ASSAM.

8: AMIYA RANJAN BHATTACHARYYA
((PHARMACIST REGISTRATION NO. 4957
32(B))
S/O- LT. DR. UMAPADA BHATTACHARYYA

FAUZADARIPATTY
B. BORA ROAD

P.O. AND DIST- NAGAON
PIN- 782001.

9: JAHIRUDDIN TALUKDAR
((PHARMACIST REGISTRATION NO. 11104
32(B))
S/O- ABDUL MANAF TALUKDAR

VILL- PACHAM JARUNI

P.O.- DABAKA
DIST.- NAGAON (HOJAI)

PIN- 782440
ASSAM.

10: ANISUR RAHMAN
((PHARMACIST REGISTRATION NO. 10132
32(B))
S/O- LT. MOLLANA AHMED ALI

BAHARI MUSLIM PATTY
P.O.- BAHARI HAT

DIST- BARPETA (ASSAM)
PIN- 781302.

11: SUSHANTA SAHA
((PHARMACIST REGISTRATION NO. 9771

32(B))
S/O- LT. PARESH CH. SAHA

VILL. AND P.O.- BARPETA ROAD

DIST.- BARPETA
ASSAM

PIN- 781315.

12: ABDUS SALAM
((PHARMACIST REGISTRATION NO. 10660
32(B))
S/O- MD. HASSAN ALI

BHERAGAON
P.O.- JANIA
DIST.- BARPETA

PIN- 781324
ASSAM.

13: KARTIK SAHA
((PHARMACIST REGISTRATION NO. 10658
32(B))
S/O- LT. MADHU SAHA

SONPURA
P.O.- JANIA
DIST.- BARPETA

PIN- 781314
ASSAM.

14: RAJIB KUMAR AGARWALA
((PHARMACIST REGISTRATION NO. 11732
32(B))
S/O- LT. BRIJ MOHAN AGARWALA

VILL. AND P.O.- JAMUNAMUKH

DIST.- HOJAI
PIN- 782428

ASSAM.

15: ABDUL WAHED
C/O- LT. JOYAN UDDIN

VILL.- BAPURBHITA PT-II

P.O.- DHAMAR RESERVE

DIST- GOALPARA

PIN- 783129

ASSAM.

16: RANJU BALA NATH

((PHARMACIST REGISTRATION NO. 7909

32(B))

C/O- LT. KHARGIDHAR NATH

BISHNU RAVA NAGAR

HOUSE NO. 2

NOONMATI

DIST- KAMRUP(M)

PIN- 781020

ASSAM.

17: ASWINI KR. NATH

((PHARMACIST REGISTRATION NO. 9205

32(B))

S/O- PANIA KR. NATH

VILL- FOREST GATE

HOUSE NO. 01

NARENGI

DIST- KAMRUP(M)

PIN- 781026

ASSAM

VERSUS

THE ASSAM PHARMACY COUNCIL AND 5 ORS

A COUNCIL CONSTITUTED UNDER THE PROVISIONS OF SEC. 19 OF THE
PHARMACY ACT, 1948 AND HAVING ITS OFFICE SITUATED IN THE OFFICE
OF THE DIRECTOR OF HEALTH SERVICES CAMPUS, PHARMACY
BHAWAN, HENGRABARI, GUWAHATI- 781036, IN THE DISTRICT OF
KAMRUP(M), ASSAM.

2:THE EXECUTIVE COMMITTEE
A COMMITTEE CONSTITUTED UNDER SEC. 27 OF THE PHARMACY ACT
1948 AND REPRESENTED BY THE PRESIDENT HAVING ITS OFFICE AT
OFFICE OF THE DIRECTOR OF HEALTH SERVICES CAMPUS
PHARMACY BHAWAN
HENGRABARI
GUWAHATI- 781036
IN THE DISTRICT OF KAMRUP(M)
ASSAM.

3:THE REGISTRAR CUM SECRETARY
ASSAM PHARMACY COUNCIL
HENGRABARI
PHARMACY BHAWAN
GUWAHATI- 781036
IN THE DISTRICT OF KAMRUP(M)
ASSAM.

4:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM

HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR
GUWAHATI- 781006.

5:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006.

6:THE DIRECTOR
HEALTH SERVICES

HENGRABARI
GUWAHATI- 781036
IN THE DISTRICT OF KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

18.03.2024

1. Heard Mr. S. Sarma, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned Standing Counsel, Health Department.
2. This court, vide order dated 31.05.2018 passed in WP(C) No. 3822/2017 and other connected writ petitions, directed the respondent No. 1 to consider the case of the petitioners, as regards validity of their Pharmacist licenses in terms of the Section 36 of the Pharmacy Act, 1948 (hereinafter referred to as the Act, 1948). It was also observed that while taking a decision in exercise of the power under Section 36 of the Act, the Executive Committee was to have strict regard to certain findings in the aforesaid order. Subsequently, in exercise of power under Section 36 of the Act, 1948, the licenses of the petitioners were cancelled and the names of the petitioners were deleted from the roll of Pharmacy Council by orders, which are under challenge in this writ proceeding. The registration numbers of the petitioners Pharmacist licences were cancelled in reference to Executive Committee Resolution (6) dated 17.08.2022 and confirmation by the State Council under Section 36(3) of the Act, 1948.
3. Some similarly situated persons also approached this court by filing WP(C) 5335/2023. However, the Co-ordinate Bench did not pass any interim order staying such orders passed under Section 36 of the Act, 1948 by the Executive Committee of the Pharmacy Council. Being aggrieved, those petitioners approached the Hon'ble Division Bench by filing WA 431/2023. The Hon'ble Division Bench, vide its order dated 24.11.2023, disposed of the appeal directing

the appellants to approach the office of the Assam Pharmacy Council within a period of two weeks from passing of the said order in terms of Section 36(4) of the Act, 1948 i.e. to prefer an appeal.

4. In this case, the petitioners have taken a plea that they have not been furnished with the Executive Committee resolution (6) dated 17.08.2022 and confirmation by the State Council under Section 36(3) of the Pharmacy Act, 1948. As such, the petitioners have not been able to prefer an appeal in terms of Section 36 of the Pharmacy Act, 1948.

5. The petitioners' counsel submits that due to there being a limitation period of 30 days, for filing an appeal to the State government against the Executive Committee Resolution and the confirmation by the State Council, the delay in filing the appeal should be condoned by the appellate authority.

6. The Division Bench of this Court in its order dated 24.11.2023 passed in W.A. No.431/2023 disposed of the appeal as follows-

“3. After hearing the learned counsel for the parties, instead of keeping this writ appeal pending, this appeal is accordingly disposed of directing the appellants to approach the Office of the Assam Pharmacy Council within a period of 2(two) weeks from today, for issuance of copies of the Executive Committee Resolution (6) dated 17.08.2022 and confirmation by the State Council under Section 36 (3) of the Pharmacy Act, 1948 on 20.01.2023. On receipt of the same, the appellants are given liberty to file an appeal before the State Government within a period of 30(thirty) days from the date of receipt of the copies of the Executive Committee Resolution and the confirmation by the State Council.

4. Till the copies of the Resolution of the Executive Committee and the

confirmation by the State Council is furnished to the appellants, the impugned orders of cancellation shall remain suspended.

5. With the aforesaid directions, this writ appeal is disposed of.”

7. Accordingly, this Court is of the view that in terms of the order dated 24.11.2023, passed in W.A. No. 431/2023, the petitioners should be allowed to file an appeal as and when they are given a copy of the Executive Committee Resolution and the confirmation of the same by the State Council.

8. As an alternative remedy of appeal under Section 36(4) of the Act, 1948 is available and in the meantime, the Hon'ble Division Bench in a similar circumstance has relegated the similarly situated petitioners to approach the appellate authority, this writ petition stands disposed of with the following directions:

I. The petitioners within a period of ten days from today shall submit a copy of the order passed by this Court today along with a copy of the writ petition to the respondent No.1.

II. The respondent No. 1 within a period of two weeks thereafter shall provide a copy of the Executive Committee Resolution to the petitioners, whereby the decision to remove the name of the petitioners from the roll of the council was taken and a copy of the decision/confirmation made by the State Council.

III. Thereafter, on receipt of the copies of the resolution made by the Executive Committee and the confirmation made by the State Council, the petitioners shall be at liberty to approach the Appellate Authority within

the prescribed period of time under Section 36(4) of the Act, 1948.

IV. Till the Resolution of the Executive Committee and confirmation by the State Council is provided to the petitioners, the orders of cancellation of licences of the petitioners shall remain suspended. The above is also subject to the condition that the petitioners should approach the respondent No.1 for furnishing copies of the Resolution of the Executive Committee and confirmation made by the State Council, within a period of 10(ten) days from today.

JUDGE

Comparing Assistant