

GAHC010012542024



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

WRIT PETITION (C) NO.388 OF 2024

Education Research and Development Foundation (ERDF),

A registered Trust having its office at ERDF Bhawan, Lamati Road,
Bhetapara, Guwahati-781028.

Represented by its Founder Trustee Azmol Hussain Barbhuiya.

2. Azmol Hussain Barbhuiya,

S/O Siddeque Ali Barbhuiya,
R/O Near Little Flower School,
Hatigaon, Guwahati-781038,
Kamrup (M).

.....**Petitioners**

- Versus -

1. State of Assam,

Represented by the Commissioner and Secretary to the Govt. of Assam,
Health and Family Welfare Department,
Dispur, Guwahati-6.

2. The Principal Secretary to the Govt. of Assam,

Health and Family Welfare Department,

Dispur, Guwahati-6.

3. The Commissioner and Secretary to the Govt. of Assam,

Medical Education and Research Department, Dispur, Guwahati-6.

4. The Director of Medical Education,

Assam, Sixmile, Khanapara, Guwahati-22.

5. Srimanta Sankardev University of Health Sciences,

Narakasur Hilltop, Bhangagarh, Guwahati-781032,

Represented by its Registrar.

6. The Pharmacy Council of India,

NBCC Centre, 3rd Floor, Plot No.2,

Community Centre,

Maa Anandmai Okhla, Phase-I,

New Delhi.

7. The Joint Secretary,

Higher Education Department, Dispur, Guwahati.

.....Respondents

For the petitioners:

Mr. B.D. Das, Sr. Advocate,

Mr. M.J. Quadir, Advocate.

For the respondents:

Mr. D.P. Borah, SC, Health Department.

B E F O R E
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

Dates of hearing : 22-07-24 & 26.07.2024

Date of Judgment : **16.08.2024**

J U D G M E N T A N D O R D E R

The petitioner No.1, namely, Education Research and Development Foundation is a registered Trust having its office at Guwahati and also operating Allama TR College of Pharmacy, Badarpur, in the district of Karimganj. The petitioner No.2 is the founder Trustee and is representing the petitioner No.1 in the present writ petition.

2. Under the Rules and Regulations to establish a Pharmacy College, amongst others, there is a requirement of issuance of a No Objection Certificate (in short, NOC) to be obtained from the Government of Assam, Medical Education and Research Department. The petitioners' College was earlier granted NOC by a Communication, dated 03.06.2022, issued by the Commissioner and Secretary to the Government of Assam, Medical Education and Research Department for starting of Degree/Diploma in Pharmacy Course for the Session 2020-2021 and

2021-2022 subject to the condition that no further admission for the Session 2022-2023 and thereafter shall be made by the Institute without further Government permission. One of the conditions of the NOC was that the Institute shall fulfill all the requirements with regard to physical infrastructure, clinical facility and teaching facility as laid down by the Government/Srimanta Sankardeva University of Health Sciences (SSUHS) within a period of one year from the date of issuance of the NOC.

3. The petitioners' College was not granted NOC for the Session 2022-2023 for admission in the B. Pharm and D. Pharm courses and therefore, being aggrieved they approached this Court by filing WP(C) No.7132/2022. This Court, on 22.06.2023, directed the Government in the Health Department to consider issuing of NOC to the petitioners' College, however, subject to the condition that the petitioners' College cooperates by giving information for any requirements made by the authorities in the Health Department, by maintaining parity with other institutions that have been granted NOC for the period 2022-2023 onwards. Thereafter, the Commissioner and Secretary to the Government of Assam, Medical Education and Research Department filed an affidavit on 03.08.2023 stating that there are certain deficiencies mentioned in the inspection report in respect of the petitioners' College and, therefore, the

Government is not in a position to issue NOC to the petitioners' Institution for the year 2022-2023 onwards at this stage. However, this Court came to the finding that the decision of the Government not to issue NOC was based on an inspection report, dated 21.02.2022, and, therefore, the authorities in the Health Department were directed to have a fresh inspection of the petitioners' College within a period of two weeks and, thereafter, take a fresh decision for issuance of NOC to the petitioners' Institution.

4. Consequently, a further inspection was made and the Inspection Report, dated 12.08.2023, was placed before this Court wherein at Clause 3 therein, it was provided that the infrastructure is inadequate with respect to rooms and laboratories but few rooms were found to be smaller in dimensions. Further, it was stated that the laboratories, which is a necessary infrastructure to operate a Pharmacy College of the petitioner, is found to be smaller in dimensions than what is required and at Clause 13 therein, it was also provided that apart from the infrastructural facilities, the Institute is having some more rooms in the same building in 4th and 5th floor, which can be utilized in future. Accordingly, the said writ petition was disposed of by order, dated 07.09.2023, with the following directions:-

"6. In view of the above, the authorities in the petitioner to approach the

Commissioner and Secretary to the Government of Assam in the Medical Education and Research Department to have a precise information as to what is required to be done and to what extent the dimensions of the laboratories are to be extended and as extra space is already available, necessary modification be done to the building so that the laboratories of acceptable dimensions are put in place. The authorities in the petitioner may forthwith approach the Commissioner and Secretary to the Government of Assam in the Medical Education and Research Department and upon doing the needful, may make the necessary modification in the building and upon completion of the same, to make a representation to the Commissioner and Secretary for an immediate inspection of the space that may be modified and the Commissioner & Secretary shall do the needful to pass a reasoned order within a period of seven days from such communication after the modification is done. Writ petition stands disposed of in the above terms."

5. The petitioner's college thereafter started the work of expanding the laboratory space in conformity with the specification prescribed by the Pharmacy Council of India and completed the work on 08.09.2023.

6. Thereafter, the Authorities of the petitioner's college appeared before the respondent No. 3 / Commissioner & Secretary to the Government of Assam, Medical Education and Research Department and in the presence of the Director of Medical Education, Assam/respondent No. 4 on 04.10.2023. The respondent No. 4, thereafter by Order dated 04.10.2023, directed the Inspection Committee constituted by Order dated 11.08.2023 to re-inspect the petitioner's college and submit a report along with views/comments. The Committee submitted its inspection report on 20.10.2023. Thereafter, the respondent No. 3 issued a Notification dated 17.11.2023 and the operative portion reads as under :

"Whereas, DME, Assam submitted an inspection report dated 20.10.2023 of

Allama TR College of Pharmacy, Badarpur, Karimganj wherein DME has opined that Allama TR College of Pharmacy has fulfilled all the required infrastructure/facilities to start Degree & Diploma in Pharmacy course as per norms and Government may kindly consider to issue NOC to the 'Allama TR College of Pharmacy' Badarpur, Karimganj to conduct D.Pharm & B.Pharm courses. However, it was also mentioned that Government in Medical Education & Research Department vide order No. HLB.442/2020/592, dated 31.01.2021 had imposed a moratorium on the opening of new pharmacy institutes temporarily till a new regulatory framework for pharmacy education in the State is notified by the Government;

Whereas, the Department notified a new Regulatory Framework on Nursing, Pharmacy and Allied Health Sciences in order to streamline Health Sciences in the State with approval of Hon'ble Cabinet on 7th November, 2023;

Whereas, all new as well as old Government and Private Pharmacy Institutes would not come under the purview of the Regulatory norms in order to ensure quality education;

Whereas, all applications of Pharmacy Courses under Private Universities would have to apply afresh in compliance of norms given in the Regulatory Framework."

7. In the meantime, the Government of Assam in the Medical Education and Research Department issued a Notification on 01.11.2023 on the subject of Regulatory Framework of Nursing, Pharmacy and Allied Health Science Sector in the State of Assam prescribing the detailed norms in regard to the physical infrastructure, academic, teaching facilities etc. for opening new Nursing/Pharmacy/Allied Health Science in the State with a view to develop Nursing, Pharmacy and Allied Health Science Education in the State of Assam and to bring them up to all India standard to produce best quality Graduate/Diploma Holders in Nursing, Pharmacy and Allied Health Science

courses. In the said Notification dated 07.11.2023, Clause (XIII) prescribes as under:

“XIII. Existing Government & Private Nursing/Pharmacy/ Allied Health Science Institutions in Assam :

All existing institutes having obtaining No Objection Certificate from the Government of Assam, offering health education in Assam are required to ensure full compliance with the aforementioned norms within a period of two years from the date of this notification failing which the No Objection Certificate would be revoked.

The Government reserves the right to make changes in the Notification as and when necessary which would be notified from time to time.

This will come into effect from the date of issue of this Notification.”

8. Being aggrieved with the Notification dated 17.11.2023, the petitioner's college is before this Court by way of the present writ petition.

9. Heard Mr. B.D. Das, learned senior counsel, assisted by Mr. M.J. Quadir, learned counsel for the petitioners. Also heard Mr. D.P. Borah, learned standing counsel, Health Department, Government of Assam for respondent Nos. 1, 2, 3, 4, 6 & 7.

10. Mr. B.D. Das, learned senior counsel for the petitioners submits that after the petitioner's college was established, the Pharmacy Council of India after inspection of the infrastructure and academic environment, teaching and non-

teaching staff of the college had granted approval for conduct of 1st Year D. Pharm and B. Pharm Courses for 2020-2021 Academic Session for 60 admissions by a Decision Letter dated 10th April, 2020. Thereafter, by another Decision Letter dated 16th August, 2021, the Pharmacy Council of India conveyed approval for conduct of 2nd Year B. Pharm course for the Session 2021-2022 and allowed 100 admissions for 2021-2022 for the 1st Year (B. Pharm). The Medical Education and Research Department, Government of Assam also issued NOC for starting Degree/Diploma for pharmacy course in respect of the petitioner's college along with one J.B. Institute, Guwahati for the Batches 2020-2021 and 2021-2022 subject to the condition that no further admission for the Session 2022-2023 shall be made by the Institute without Government permission along with other conditions. He submits that similar conditions were also imposed on three other colleges including one NEF College of Pharmaceutical and Research, Jail Road, Nagaon by a Communication dated 25.05.2022 issued by the Medical Education and Research Department, Government of Assam. However, the said NEF College of Pharmaceutical and Research, Jail Road, Nagaon was given No Objection by the Government for the Session 2022-2023 onwards by a Communication dated 20.02.2023. However, the petitioner's college was not granted the NOC by the Medical Education and

Research Department, Government of Assam for the Academic Session 2022-2023. When the petitioner's college approached this Court by filing WP(C) No. 7132/2022, this Court has directed the Government in the Health Department to consider for issuance of NOC to the petitioner's college by the order dated 22.06.2023 subject to the condition that the petitioner's college cooperate by giving information of any requirements made by the authorities in Health Department. Thereafter, the said writ petition was disposed of by the order dated 07.09.2023 and on the basis of directions passed by this Court, the respondent No. 4 by Order dated 04.10.2023 directed the earlier constituted Inspection Committee for having a re-inspection of the petitioner's college. The said Inspection Committee thereafter submitted its report on 20.10.2023 giving its opinion that the petitioner's college has fulfilled all the required infrastructure facilities to start Degree and Diploma in Pharmacy courses as per the Norms of the Government. However, the respondent No. 3 by the Notification dated 17.11.2023 rejected the case of the petitioner's college for issuance of NOC for Session 2023-2024 on the ground that the Government of Assam in Medical Education and Research Department by Order dated 31.01.2021 had imposed a moratorium on the opening of new pharmacy institute temporarily till a new Regulatory Framework for pharmacy education in the State is notified by the Government and that all applications of Pharmacy Courses under Private

Universities would have to apply afresh in compliance of norms given in the Regulatory Framework which was notified by the Notification dated 07.11.2023.

11. Learned senior counsel for the petitioner's College also submits that the Pharmacy Council of India by a Communication dated 17th July, 2019 addressed to all the State Governments/ Union Territories, had clarified that the moratorium shall not be applicable in the North Eastern Region of the country where there is shortage of pharmacy colleges. He also submits that the Regulatory Framework of Nursing, Pharmacy and Allied Health Sciences issued by the Notification dated 07.11.2023 is with regard to the opening of New Nursing, Pharmacy and Allied Health Science courses in the State and therefore, the same has no application to the case of the petitioner's College inasmuch as the petitioner's College had already been established long before the Notification dated 07.11.2023 was issued. Learned senior counsel submits that one NEF College of Pharmaceutical and Research, Jail Road, Nagaon was granted NOC by the respondent No. 3 for the Session 2022-2023 onwards by a Communication 20th February, 2023 when the moratorium on the opening of new pharmacy institute was issued by the Medical Education and Research Department by Order dated 31.01.2021. Therefore, when the said NEF College of Pharmaceutical and Research, Jail Road, Nagaon could be issued NOC by the

respondent No. 3 for the Session 2022-2023 onwards by the Communication dated 20th February, 2023, there was no reason why the petitioner's College should not be granted NOC particularly when all the deficiencies had been rectified. The very action of the respondent Nos. 3 & 4 in not granting NOC to the petitioner's College is, therefore, illegal and arbitrary and accordingly, a direction should be issued to the respondents for issuance of NOC to the petitioner's College.

12. Mr. D.P. Borah, learned Standing counsel, Health Department, submits that the petitioner's college, without obtaining NOC from the Government, had started the Academic Session 2020-2021 and 2021-2022 and therefore, considering the career of the admitted students, the Government in the Medical Education and Research Department issued NOC to the petitioner's college for the Session 2020-2021 and 2021-2022 by the Communication dated 03.06.2022. He also submits that as the Government in the Medical Education and Research Department, Assam had already imposed a moratorium for opening of new pharmacy institutes by the Order dated 31.01.2021, the NOC could not be issued to the petitioner's college. The learned standing counsel, Health Department also submits that the authorities in the Medical Education and Research Department had already issued a New Regulatory Framework for

Nursing, Pharmacy and Allied Health Science by Notification dated 07.11.2023 and therefore, under the New Regulatory Framework all applications of Pharmacy Courses under Private Universities would have to apply afresh in compliance of norms given in the Regulatory Framework. Therefore, the respondents were not in a position to issue NOC to the petitioner's college and instead instructed the petitioner's college to submit a fresh Expression of Interest. He also submits that the petitioner's college has submitted the Expression of Interest through the Director of Medical Education, Assam which is under process at the Government level. Further submission is made that Memorandum of Understanding signed between Karimganj Civil Hospital, Karimganj and the petitioner's college has been cancelled with immediate effect by a Communication dated 11th July, 2024 written by the Director of Health Service, Assam and addressed to the Joint Director, Health Service, Karimganj and the Superintendent, Karimganj Civil Hospital, Karimganj. Therefore, under such circumstances, the petitioner's college cannot be granted NOC until they fulfill all the norms prescribed in terms of the New Regulatory Framework of Nursing, Pharmacy and Allied Health Science Sectors in the State of Assam which has been notified by the Notification dated 07.11.2023.

13. I have considered the submission forwarded by the learned counsel for the

parties.

14. This Court has perused the NOC that was granted to the petitioner's college by the Communication dated 3rd June, 2021 issued by the Respondent No. 4. The said communication indicates that the conveyance of the NOC of the Government of Assam in Medical Education and Research Department for starting Degree/Diploma in Pharmacy courses for the Session 2020-2021 and 2021-2022 to the petitioner's college is subject to the condition that no further admission for the Session 2022-2023 and thereafter shall be made by the Institute without Government permission. The NOC also prescribes other conditions amongst which it is also provided that the institution shall fulfill all requirements with regard to the physical infrastructure, clinical facilities and teaching facilities as laid down by the Government within one year from the date of issuance of the said NOC.

15. This Court has also taken into consideration the Communication dated 20.05.2022 issued by the respondent No. 4 granting NOC to three other colleges including the NEF College of Pharmaceutical and Research, Jail Road, Nagaon with the same conditions as contained in the NOC granted to the petitioner's college by Letter dated 03.06.2021.

16. This Court has also considered the order dated 29th September, 2021 issued by the Principal Secretary to the Government of Assam, Health and Family Welfare Department, wherein it is reflected that the Health and Family Welfare Department had taken a decision to continue imposition of moratorium on opening of new Pharmacy Institutes temporarily till a New Regulatory Framework for the pharmacy education in the State is notified by the Government. The Notification dated 07.11.2023 issued by the respondent No. 3 notifying the Regulatory Framework of Nursing, Pharmacy and Allied Health Science Sectors in the State of Assam has also been considered. What this Court has noticed in the Order dated 20th September 2021 and the Notification dated 07.11.2023 is that the Order and the Notification were issued with regard to the opening of new Nursing, Pharmacy and Allied Health Science in the State of Assam. The petitioner's college was already granted approval for conduct of 1st Year D. Pharm and B. Pharm courses for 2020-2021 Academic Session by the Pharmacy Council of India by the Decision Letter dated 10.04.2020. Further, the Pharmacy Council of India by the Decision Letter dated 16.08.2021 had granted approval to the petitioner's college for the Session 2021-2022 for conduct of 2nd Year B. Pharm course and allowing 100 admission for 2021-2022 in 1st Year B. Pharm. Therefore, the petitioner's college cannot be considered as a new

institution in terms of the Order dated 31.01.2023 and the Notification dated 07.11.2023.

17. The Communication dated 17th July, 2019 written by the Registrar-cum-Secretary of the Pharmacy Council of India and addressed to all the State Governments/Union Territories also clearly prescribes that the moratorium shall not be applicable for the North Eastern Region of the country, where there is shortage of pharmacy colleges.

18. Consequent to the Order dated 07.09.2023 passed by this Court in WP(C) No. 7132/2022, the Director of Medical Education, Assam/respondent No. 4 issued an order on 04.10.2023 directing the Inspection Committee, which was constituted on 11.08.2023, to re-inspect the petitioner's college to verify whether the authorities of the petitioner's college has fulfilled the deficiency/shortcomings as indicated in the previous inspection report with regard to issuance of NOC to conduct D. Pharm and B. Pharm Courses. Accordingly, the Inspection Committee submits its report on 20.10.2023 wherein it was the opinion of the said committee that the petitioner's college has fulfilled all the required infrastructure/facilities to start Degree and Diploma courses as per the Norms and therefore, the Government was requested to consider the issuance of NOC to the petitioner's college to conduct D. Pharm and B. Pharm

courses. However, the Inspection Committee also made an observation that the Government in Medical Education and Research Department by the order dated 31.01.2021 had imposed a moratorium on the opening of new pharmacy institutes temporarily till a new Regulatory Framework for Pharmacy Education in the State is notified by the Government. The said inspection report is also reflected in the Notification dated 17.11.2023, which was issued by the respondent No. 4. This Court, on a consideration of the report of the Inspection Committee, has no hesitation to come to the conclusion that the petitioner's institution has fulfilled all the required infrastructure/facilities to start Degree and Diploma in Pharmacy courses. Further, this Court has also given its findings with regard to the Order dated 31.01.2021 and the Notification dated 07.11.2023. Under such circumstances, there should be no impediment on the part of the respondents to issue NOC to the petitioner's institution to start Degree and Diploma in Pharmacy courses.

19. Another point of note is that when the Order dated 31.01.2021 was in force, the respondent No. 4, by the Communication dated 20th February, 2023, had issued NOC to one NEF College of Pharmaceutical and Research, Jail Road, Nagaon for the Session 2022-2023 onwards. The said college was also granted NOC by Commutation 25.2.2022 containing the same terms and conditions that

was given to the petitioner's college when the NOC was granted for the Session 2020-2021 and 2021-2022 by Communication dated 3rd June, 2022. Therefore, when the said NEF College of Pharmaceutical and Research, Jail Road, Nagaon could be given NOC for the Session 2022-2023 onwards despite the moratorium being in force through the Order dated 31.01.2021, the objections of the respondents for issuance of NOC to the petitioner's college on the ground that there is a moratorium imposed by the Order dated 31.01.2021 is found to be arbitrary.

20. This Court has also taken into consideration the submission of the learned Standing counsel, Health Department that the petitioner's institution has already submitted afresh expression of interest before the respondents which is under consideration at the Government level.

21. In view of the discussions made hereinabove, this writ petition is disposed of directing the respondent No. 3 to re-visit the Inspection Report dated 20.10.2023 by also taking into account that the petitioner's college has fulfilled all the required infrastructure/ facilities to start Degree and Diploma courses and the petitioner's college has also submitted the Expression of Interest and thereafter take steps forthwith for issuance of NOC to the petitioner's college and permit the institute to conduct courses of D. Pharm and B. Pharm without

any further hindrance.

22. Let such exercise be done and conclude within a period of 1 (one) month from the date of receipt of a true certified copy of order of this Court.

23. Consequently, the Notification dated 17.11.2023 issued by the respondent No. 3 is set aside.

No cost.

JUDGE

Comparing Assistant