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RANJAN SINHA & ANR.

v.

AJAY KUMAR.VISHWAKARMA & ORS.

(Civil Appeal No. 8121 of 2004)

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JULY 03, 2017

**[JAGDISH SINGH KHEHAR, CJI, N. V. RAMANA AND  
DR. D. Y. CHANDRACHUD, JJ.]**

*Pharmacy Act, 1948:*

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*Object of the Act – Role of pharmacist – Discussed – Drugs and Cosmetics Act, 1940.*

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*ss.31, 32 – First Register prepared by erstwhile State of Bihar is to be treated as the First Register for newly formed State of Jharkhand and State of Bihar – The First Register as prepared by the erstwhile State of Bihar is to be bifurcated based on the territorial nexus with the residential address as provided by the pharmacists at the time of registration – The State of Jharkhand is at liberty to take all necessary steps to constitute a State Council – Those pharmacists who are registered in the First Register of the erstwhile State of Bihar, before the enforcement of Education Regulation made by the Central Pharmacy Council, and who do not wish to practice in the State in which their residential address falls are at liberty to register themselves in the other State in accordance with s.32(2) of the Pharmacy Act – However, such of those pharmacists whose names were registered in the First Register prepared by the erstwhile State of Bihar, need to formally seek registration u/s.32(2) of the Act in the State of Jharkhand and they need not satisfy the qualification prescribed by the Education Regulation – Bihar Reorganization Act of 2000 – ss.84, 85 – Constitution of India – Art.3.*

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*s.32 – Subsequent register – After the Education Regulations came in force, only persons who possess qualification as prescribed by the Education Regulations are entitled to be registered – Thus, the qualifications as mentioned in s.31 would be relevant only till preparation of First Register u/s.30 – Bihar Reorganization Act, 2000.*

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*Bihar Reorganization Act, 2000:*

*ss.84, 85 – All the laws immediately in force before the appointed date in the erstwhile Bihar shall be deemed to be applicable to the territories of Jharkhand and the territories of Bihar for the purpose of applicability of laws.*

*When a new State is formed by law made by Parliament, whether the laws made by the existing State out of which a new State is formed continue to apply to the territories included in the new State – When the existing State territory is reorganized by the Parliament there is no change in Sovereignty – It is only adjustment of territories by transferring some territories in the existing State to a newly formed State – Therefore, all the laws which were applicable to the territories of the re-organized State would continue to apply to the territories transferred to the new State until the latter either adapts or, subject to its competency amends or repeals the existing and applicable laws.*

*Constitution of India – Art.3 – The principle of ‘clean slate’ as applicable in international law is not applicable when reorganization takes place u/Art.3 of the Constitution – The reorganized States do not usually start as tabula rasa, rather they are successors of a pre-existing erstwhile States – Bihar Reorganization Act, 2000.*

**Disposing of the appeal, the Court**

**HELD: 1.** After the enactment of Drugs and Cosmetics Act, 1940 which prescribed the standard of quality of drugs sold in India, the importance of the role played by a pharmacist was realized. The Drug Rules, made under the Drugs and Cosmetics Act, prescribed that the medicines which were compounded on the prescription of medical practitioner can only be sold directly by a pharmacist. In the absence of a qualified pharmacist, there was a threat to the general health of people in India. Therefore with a view to regulate the profession and practice of pharmacy, Pharmacy Bill of 1947 was introduced in the Parliament. It was referred to the Select Committee which made recommendations. Incorporating the same, the bill was passed. The statement of objects and reasons makes it clear that only persons with minimum standard of professional education should be permitted

A to practice the profession of pharmacy and for that purpose; it  
 was proposed to establish a Central Pharmacy Council with  
 powers to prescribe minimum standards of pharmacy education.  
 It was also proposed to establish provincial registers of qualified  
 Pharmacists. After the Act came into force, erstwhile Bihar  
 B constituted Registration Tribunal which duly prepared the First  
 Register of pharmacists and the State Government published the  
 same as per Section 30 (4) of the Act. [Paras 12, 13][208-G-H;  
 209-A-C]

2. When the Act was first enforced in the erstwhile Bihar,  
 there was neither a formal course in Pharmacy nor was there any  
 C Education Regulation made by the Central Council. Section 31  
 stipulated qualifications for pharmacists, as a temporary measure,  
 for preparation of First Register in the erstwhile Bihar. Section  
 32 of the Act prescribes qualifications for subsequent registration.  
 According to Section 32 (2), after the Education Regulations were  
 D brought in force, only those persons who possess qualification  
 prescribed by Education Regulations are eligible to be entered  
 in the register of the pharmacists.[Para 18][212-C-D]

3.1 After formation of Jharkhand with effect from  
 15.11.2000, by reason of Section 3 of the BROA, the territories  
 E in the erstwhile Bihar were included in the Jharkhand. As a result  
 those included territories ceased to be the territories of Bihar,  
 but, Section 84 and 85 of BROA saved all the enactments in force  
 immediately before 2000 and provided that the provisions of the  
 reorganization of the Bihar [Section 3 to 6 in Chap 2, BROA],  
 shall not be deemed to effect the change in territories to which  
 F any law in force applied. Further it is provided that any territorial  
 reference in any law to the Bihar shall be construed, as meaning,  
 the territories within the existing territories of Bihar before the  
 appointed day. All the laws which are referred to in Section 84 of  
 the BROA would continue to have effect unless they are modified  
 G by way of repeal or amendment by the appropriate Government  
 i.e., Central or State Government, as the case may be. Further  
 the term 'law' is defined in Section 2 (f) of BROA includes any  
 enactment, ordinance, regulation, order, bye-law, rule, scheme,  
 notification or other instrument having, immediately before the  
 H appointed day, the force of law in the whole or in any part of the

existing Bihar. Therefore, all the laws immediately in force before the appointed date in the erstwhile Bihar shall be deemed to be applicable to the territories of Jharkhand and the territories of Bihar for the purpose of applicability of laws shall be deemed to be part of territories of erstwhile State of Bihar before the appointed date. [Paras 19, 20][212-E-H; 213-A]

3.2 Sections 31 and 32 make it clear that the qualifications prescribed for entering the name of the pharmacists in the First Register is different from the qualifications prescribed for entering the name of the pharmacist in the subsequent register, after coming into force of Education Regulations. When the legislature enacted the Act, there were hardly any pharmacy colleges offering dedicated pharmacy course. Taking that into consideration, Parliament prescribed qualifications under Section 31 for a limited period till the framing of Education Regulations. After the Act came into force by reason of Sections 10 and 11, the Central Council was empowered to make Education Regulations prescribing minimum standards of Pharmacy education. Thus, Sections 30 and 31 were intended to be effective and enforceable only till such time the Central Council makes Education Regulations. This is the reason why Section 32 starts with the phrase '*after the date appointed under sub section (2) of section 30 and before education regulations have taken effect in the State.*' In such a case a person shall be entitled to have his name entered in the register if he carries on the profession of the pharmacy in the State and he satisfy the conditions prescribed by the State. As per sub-section (2) of Section 32, after enactment of the Education Regulations, a person shall be entitled to have his name entered in the register only if he possesses the qualifications as prescribed by Education Regulations. Thus, the qualifications as mentioned in Section 31 would be relevant only till such time of preparation of First Register under Section 30.[Para 21][213-B-E]

3.3 The question however, remains as to whether the First Register prepared by the erstwhile Bihar shall be deemed to be the First Register of the newly formed State of Jharkhand. The Act came to force in India, including erstwhile Bihar, in the year 1948. As per Section 29 (1), every State as soon as Chapter IV

A has taken effect, the State shall prepare a register of pharmacists by inference, such register is the First Register. Section 31 prescribes qualifications for those who would be entered into First Register. For the purpose of registration in the First Register, State Government shall constitute a Registration Tribunal and  
B the First Register so prepared shall be published. The First Register prepared and published shall be a permanent register in relation to all pharmacists in the State of Bihar. The same shall be given custody to the State Council constituted under the Section 19. A reading of sub-section (4) and (5) of Section 30 would show that an authority appointed by the State Government  
C to hear appeals in relations to First Register, shall decide the question of entering a new name in the register or amending the same. Such facility is available after the date appointed under Sub section (2) of Section 30 and before the enforcement of Education Regulations made by the Pharmacy Council of India.  
D [Paras 22, 23][213-F-G; 214-A-C]

4. There is no doubt that as directed by the State Government, the First Register for the erstwhile Bihar was duly published after following the procedure contemplated under Section 30 of the Act. Article 3 of the Constitution *inter alia*,  
E empowers the Parliament by law to form a new State by separation of territory from any State or by uniting two or more States. Article 4 is to the effect that the law made by the Parliament with reference to Article 3 may contain supplemental, consequential and incidental provisions. When the existing State territory is reorganized by the Parliament there is no change in Sovereignty.  
F It is only adjustment of territories by transferring some territories in the existing State to a newly formed State. Therefore, all the laws which were applicable to the territories of the re-organized State would continue to apply to the territories transferred to the new State until the latter either adapts or, subject to its competency amends or repeals the existing and applicable laws.  
G Whenever a law was made under the Articles 2, 3 and 4 of the Constitution of India, re-organizing the State, the Parliament included provisions to explicitly spell out such position. States Re-organizations Act of 1956, Bombay Re-organization Act of 1960, The Punjab Re-organization Act of 1966, Madhya Pradesh

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Re-organization Act of 2000, Uttar Pradesh Re-organization Act of 2000 and Andhra Pradesh Re-organization Act of 2014 contained provision which laid down that the laws in existing State would apply to all the territories transferred to form a new State. [Paras 24-26][214-C-D, E-H; 215-A; 216-A-B] A

5. Section 84 of BROA contains two legal fictions, first is that the reorganization of the Bihar would not affect the applicability of laws made by the State of Bihar to all territories included in it before reorganization and after the re-organization. In other words, a law made by Bihar shall be applicable to all the territories of erstwhile State of Bihar including the territories of State of Jharkhand even after reorganization. The second fiction is that until Jharkhand provides for it by way of amendment or otherwise, territorial reference in any law to the Bihar shall mean all the territories in the Bihar before reorganization. For instance, if Bihar had made a law as applicable to entire Bihar, it shall apply to the Bihar and Jharkhand until it is amended by the new State. The territories to which the said Act is made applicable would also include the territories which were included in the Jharkhand. Section 85 is an enabling provision which empowers both the States to make adaptations and modification of the law by way of amendment to the law as the applicable to newly formed State. [Para 29][218-A-C] B C D E

6. The First Register published in Bihar before reorganization would be deemed to be the First Register of newly formed Jharkhand to the extent it contains those pharmacists who were natives of the territories that were transferred to Jharkhand. When a State as forming part of Indian nation is re-organized, in law in so far as application of laws is concerned, the following three things would happen namely; (i) the existing State (Parent State) which made various laws, would continue to exist; (ii) the new State so formed by transferring some territories will be deemed to be the territories of the parent State for the purpose of applicability of the laws; and (iii) those laws made by parent State shall continue to apply to new State until they are modified or amended by a competent legislature in relation to new State and the 'law' as defined in the definition Clause would be the law which was in force in the existing State which would be enforceable F G H

A in the newly formed State. [Paras 34, 35][223-A-C]

7.1 Under Article 3 of the Constitution, the Parliament can alter, amend, amalgamate, form new States, diminish or increase area of a State. The principle of 'clean slate' as applicable in international law is not applicable when reorganization takes place under Article 3 of the Constitution. The reorganized States do not usually start as *tabula rasa*, rather they are successors of a pre-existing erstwhile States. Under the BROA, the Jharkhand was carved out of the Bihar and the two separate states came into existence on 15.11.2000. If the laws in force were to lapse on the day the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. To avoid such situation, provisions like Sections 84 and 85 of BROA have been enacted to maintain continuity, and at the same time authorizing the States to make such modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by legislation. 'Law' includes 'other instruments having the force of law'. In view of use of the word 'includes', the definition of 'law' under Section 2(f) shall be interpreted exhaustively. The First Register prepared by the Bihar has the force of law under Section 2(f) of the BROA. [Paras 36, 37][223-D-H]

7.2 In view of that when the First Register of Pharmacists prepared by the Registration Tribunal was published by the Government of Bihar under subsection (4) of Section 30, the same is conclusive and any amendments by way of inclusions can be carried out till the framing of the Education Regulations by the Pharmacy Council of India. For doing this the competent authority may take into consideration the qualifications as prescribed by Section 31 of the Act. However, after the coming into force of the Education Regulations as well as at the time of subsequent Registration, Government has to necessarily adhere to the Education Regulations. Any person who does not satisfy the qualifications as per the Education Regulations shall not be entitled to seek entry in the Pharmacy register. In that view of the matter, when the State of Bihar is precluded from preparing the First Register again, then the State of Jharkhand is equally not entitled in law to prepare the First Register again. The High

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court of Jharkhand therefore came to correct conclusion in this regard. The High Court did not consider the effect of Section 84 of BROA fully with reference to First Register, though it came to the conclusion that there was no need for preparing the First Register all over again. The First Register for the State of Jharkhand is the register already prepared for the undivided Bihar including all the pharmacists who may now be residing in the State of Jharkhand. In so far as BROA is concerned, though the Act was adopted under Sections 84 and 85 of BROA, no such amendment has been made. In that view of matter applying section 84, First Register prepared by the erstwhile Bihar will be deemed and continues to be the First Register for the Jharkhand. This does not however prohibit the Jharkhand to take up subsequent registration as per Sections 32 and 32A and 32B. In such an event concerned authority of Jharkhand has to follow the Education Regulations as amended from time to time by the Pharmacy Council of India. Section 86 of BROA, explicitly empowers this Court to construe the law in a manner to effectively implement Sections 84 and 85. In light of having considered all the provisions of BROA, all pharmacists in the First Register of pharmacist for the former State of Bihar, whose residential address, as shown therein, fall in the territory of State of Jharkhand, shall be construed to be part of First Register of Jharkhand. Future inclusion of additional names in the Register is to be made strictly in terms of Section 32(2) of the Pharmacy Act. State of Jharkhand will take all necessary steps to constitute a State council in near future, if not already undertaken. Consequently the High Court order to the extent of quashing the notification of State Government of Jharkhand, dated 12.11.2001, constituting the Registration Tribunal in terms of Section 30 and advertisement calling for applications in terms of Section 31 is upheld. [Paras 38, 39, 41 and 42][224-A-E; 225-G-H; 226-A-C]

*State of Punjab v. Balbir Singh* (1976) 3 SCC 242 : [1976] 2 SCR 115; *Sher Singh v. Financial Commissioner of Planning, Punjab* (1987) 2 SCC 439 : [1987] 2 SCR 691; *Dayanand v. Union of India* (1996) 7 SCC 47 : [1995] 3 Suppl. SCR 533; *Commissioner of Commercial Taxes, Ranchi v. Swarna Rekha Cokes and*

- A *Coals (Pvt.) Ltd.* (2004) 6 SCC 689 : [2004] 2 Suppl. SCR 633 – relied on.

Case Law Reference

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|---|-------------------------|-----------|---------|
|   | [1976] 2 SCR 115        | relied on | Para 30 |
|   | [1987] 2 SCR 691        | relied on | Para 31 |
| B | [1995] 3 Suppl. SCR 533 | relied on | Para 32 |
|   | [2004] 2 Suppl. SCR 633 | relied on | Para 33 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8121 of 2004.

- C From the Judgment and Order dated 18.06.2003 of the High Court of Jharkhand at Ranchi in W. P. (PIL) No. 1429 of 2002.

- D Maninder Singh, ASG, A. Mariarputham, Ajit Kr. Sinha, Sr. Advs., Ms. Aruna Mathur, Yusuf Khan, Avneesh Arputham, Ms. Anuradha Arputham (For M/s. Arputham, Aruna & Co.), Ms. Bina Gupta, Prabhas Bajaj, Rohit Rathi, Akshay Amritanshu, Ratan Kumar Choudhuri, A. P. Mayee, Kumar Parimal, A. Selvin Raja, Mishra Saurabh, Ankit Kr. Lal, Ms. Vanshaja Shukla, C.D. Singh, Ms. Sakshi Kakkar, Varinder Kumar Sharma, Mohd. Shahid Hussain, Ashok Mathur, B. K. Satija, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- E N. V. RAMANA, J. 1: This case revolves round the complexities faced by the State of Jharkhand [*hereinafter* ‘Jharkhand’ for brevity] and applicability of laws, framed by the erstwhile State of Bihar [*hereinafter* ‘Bihar’ for brevity], to the newly bifurcated State by means of Bihar Reorganization Act, of 2000 (Act No. xxx of 2000) [*hereinafter* ‘BROA’ for brevity]. In this Civil Appeal we are called upon to determine the scope of Sections 30, 31 and 32 of Pharmacy Act, 1948 [*hereinafter* ‘Act’ for brevity] and it’s applicability to the new State after 15.11.2000. The examination of the questions which fall for our consideration, as indicated hereafter, would also involve consideration of various provisions of BROA, which we propose to do after noticing the brief factual background.

- G 2. The Act came into force in India including the undivided Bihar in 1948. In the State of Bihar, State Pharmacy Council, under the Chapter III was established on 07.02.1955 and consequently First Register of pharmacists, under Section 30 of the Act, was duly prepared. In the

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meanwhile, the Education Regulations framed by Pharmacy Council of India under Section 10 of the Act came into force with effect from 07.02.1958, It may be mentioned that after Education Regulations came into force, only such persons with qualifications as per those regulations can be entered in the Register of Pharmacists. A

3. After the bifurcation, Jharkhand constituted Registration Tribunal under Section 30 of the Act on 12.11.2001. The said Tribunal published the following notification on 14.01.2002 inviting applications for registration of pharmacists in the State of Jharkhand. B

**HINDUSTAN**

*Published from Ranchi,  
Patna, Delhi and Lucknow* C

**RANCHI, MONDAY 14 TH JANUARY 2002**

**GOVERNMENT OF JHARKHAND**

**HEALTH, MEDICAL EDUCATION AND FAMILY WELFARE DEPARTMENT  
(MEDICAL EDUCATION AND RESEARCH)** D

**PRESS NOTIFICATION**

As per notification No. 40(i) of the Health, Medical Education and Family Welfare Department dated 10.01.2002 all persons having qualification under Section 31 of the Pharmacy Act 1948 may apply for registration and the last date for making such applications fixed as 25.02.2002. E

The prescribed fee for registration are described as under:

- |                                 |                   |  |   |
|---------------------------------|-------------------|--|---|
| 1. Registration fee             |                   |  |   |
| Application form fee            | :Rs. 25/-         |  |   |
| Inscentive fee                  | :Rs. 25/-         |  | F |
| Registration fee                | :Rs. 200/-        |  |   |
| 2. Renewal fee                  |                   |  |   |
| Incentive fee                   | :Rs. 25/-         |  |   |
| Renewal fee                     | :Rs.100/-         |  | G |
| 3. No objection certificate fee | : Rs.100/-        |  |   |
| 4. Duplicate Certificate fee    | : Rs. 275/-       |  |   |
| 5. Late fee                     | : Rs. 25 per year |  |   |

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- A The application forms can be obtained on any working day from the office of Pharmacy Institute, Ranchi, Registrar, Pharmacy Registration Tribunal, Bariyat, Ranchi on prescribed fee and the completed form along with the bank draft can be deposited at the same place.

Sd/- (Prakash Kumar)

Dy. Secretary to Govt.

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P.R. 2278 (Health 100)  
2001-2002

(emphasis supplied)

- C 4. It is clear from the press notification that all the persons who have qualification under Section 31 of the Act were qualified to apply for registration as pharmacists. Being aggrieved, three diploma holders in pharmacy from the recognized institutions and registered as pharmacists filed Writ Petition being W.P. No. 1429 of 2002, praying for writ in the nature of certiorari to quash the press notification dated 14.01.2002 and for a writ in the nature of mandamus to Registration Tribunal, Ranchi, the Respondent No. 6 herein, to register only such persons, as pharmacists, who have requisite qualifications in terms of the Education Regulations, 1991 i.e., having qualification of diploma or degree of duly recognized by Pharmacy Council of India or State Councils. The Petitioners before the High Court mainly contended that when the First Register under Section 30 of the Act was prepared by the erstwhile Bihar, there is no question of preparing First Register again by Jharkhand and that any subsequent registration or preparation of register will be in accordance with Section 32 in which event only those persons who fulfill the qualification as per the Education Regulations would be entitled to be registered as pharmacists.

- F 5. Before the High Court, Jharkhand took a plea that on formation of the new State it acquired a right to prepare First Register in terms of Section 30 and that in furtherance thereof a Registration Tribunal was constituted to register all those who possess qualifications in terms of Section 31. The State Pharmacy Council also took a similar plea. It is a matter of record that out of 10950 applications received pursuant to 14.01.2002 notification, a large number of them i.e., 8940 persons did not have the degree or diploma in pharmacy. But all of them sought registration relying on Section 31(d) of the Act.

- H 6. A division bench of the High Court of Jharkhand on elaborate

consideration of applicable provisions of the Act and BROA came to the conclusion that Education Regulations, applicable to the erstwhile Bihar, are law for the new State of Jharkhand in terms of Sections 84 and 85 of the BROA and therefore unless a person is qualified as per Education Regulations, cannot get himself registered. It was observed as under-

What is contended on behalf of the Petitioners is that the Pharmacy Act was extended to the State of Bihar had notified and adopted the Education Regulations issued under Section 10 of the Act which was in Part II of the Act, that both the Act and the Education Regulations hence constitute law for the purpose of the State of Jharkhand carved out of the modification of either the Education Regulations or the Pharmacy Act by the competent Legislature, namely, the Parliament, that no such attempt was also made by the State of Legislature and in the Jharkhand and unless a person was qualified in terms of the Education Regulations, he could not get his name entered in the Register. We find considerable force in this submission. It is true that the Jharkhand was carved out with effect from 15.11.2000. By virtue of Section 84 of the Bihar Reorganization Act, the Pharmacy Act and the Education Regulations applied. In the absence of any modification, alternation or repeal of either the Act or the Education Regulations by the competent Legislature, it could not be postulated that the law had ceased to be in force merely on the formation of the State of Jharkhand. Section 84 of the Bihar Reorganization Act, in our view, is clear. Moreover, it is not possible for the Court to contemplate a law less State as it were. If the argument of the Respondents were to be accepted, the position would be that there was no law relating to Pharmacy or regarding qualifications for getting recognition as a Pharmacist in the State of Jharkhand and it is yet to be made. In other words, until the same is made there will be a vacuum. Such an argument, unless compelled, can not be acceptable. The territories now forming the State of Jharkhand originally formed part of the State of Bihar, were governed by the Act and the Education regulations promulgated and adopted in terms of Section 85 of the Bihar Reorganization Act. This scheme of the Reorganization Act is consistent with the general principle that a law once made applicable to a territory will continue to apply to that territory unless its application is abrogated or dispensed

A with by the competent Legislature or authority or its replacement  
B by any other law enacted in that behalf. Therefore, it is clear that  
Education Regulations promulgated under Section 10 and adopted  
in terms of Section 11 of the Act to the territory in question,  
continues to apply. There is also the stand adopted by the Indian  
pharmacy Council in its additional counter affidavit. We find the  
said stand sustainable in law.

7. In dealing with the question whether Jharkhand is entitled to  
prepare the First Register again, the High Court observed that it is  
skeptical on the need for preparing the First Register in terms of Section  
30 of the Act and went on to say.

C There was already a First Register for the State of Bihar including  
the territories forming the State of Jharkhand in terms of Section  
3 of the State of Bihar Reorganization Act. Those who are included  
in the First Register and who are practicing their profession within  
D the territories newly forming the Jharkhand, would continue to  
have the right to practice their profession in the newly created  
State of Jharkhand. The first register for State of Jharkhand would  
be of those persons who are already in the register prepared for  
the undivided State of Bihar based on their territorial loyalty or  
E the situs of their practice. There will therefore be no need for  
preparing the First register all over again as urged by the counsel  
for the State of Bihar and the tribunal constituted under Section  
13 of the Act. The First register for the State of Jharkhand is the  
register already prepared for the undivided Bihar including all those  
who are now of State of Jharkhand or are practicing their  
F profession in the territories of the State of Jharkhand. What would  
arise would only be the inclusion of further names of qualified  
persons, if they possess the requisite qualification under the  
Education regulations and in terms of Section 32 (2) of the  
Pharmacy Act. The argument, that on the formation of a State,  
the State is obliged to prepare a First register in terms of Section  
G 30 of the Act with reference to Section 31 of the Act cannot,  
therefore, be accepted.

8. Aggrieved by the Order of the High Court, appellants herein  
appealed by way of special leave to this Court.

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POINTS FOR CONSIDERATION

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9. In light of these background facts and contentions raised by the appellants, following two points would arise for consideration-

1. Whether the First Register prepared by the State of Bihar shall be deemed to be the First Register of the State of Jharkhand in view of Section 84 and 85 of the Bihar Reorganization Act of 2000?
2. Whether persons who do not possess any qualification as prescribed by the Education Regulations are entitled to be registered by the State of Jharkhand?

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SUBMISSIONS

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10. Before this Court, Learned Senior Counsel Shri A. Mariarputham, for appellant has mainly contended that-

- a. On reading the provisions of the Act, it is clear that there is a mandatory requirement to have register under Section 29 by every State/State Government and the State Council is duty bound to maintain the register as required under Section 29.
- b. The Hon'ble High Court has erred in failing to appreciate that every State has to have a First Register of the pharmacists on its own as mandated in Section 30 and 31 of the Act which is an express provision. If the interpretation given by the Hon'ble High Court is agreed, then Section 29, 30 and 31 will become redundant and meaningless.
- c. In any case the Education Regulation which is a subordinate legislation cannot prevail over the express provisions of the Act. The High Court erred in laying down to procedure which is not in consonance with the express provisions of the Act.

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11. Learned Senior Counsel Shri Ajit Kumar Sinha, for State of Jharkhand contends that-

- a. Section 30 requires First Register to be prepared by the State Government by constituting a Registration Tribunal.
- b. In the erstwhile State of Bihar, there was a Register in existence, does not take away the obligation of the State of Jharkhand to prepare the First Register.
- c. The fact that territories comprised in the State of Jharkhand

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- A were earlier part of Bihar, does not detract from the fact that Jharkhand is a separate and independent State, and that it is a new State, or affect its rights and obligations under Section 30.
- B d. The obligation to prepare the first register and the right to do so by the new State of Jharkhand is clear and protected by Section 30.
- C e. A view that it is not desirable to include in the First Register, all the persons mentioned in Section 31 of the Act as eligible to be included in the first register, cannot be a factor or consideration in interpreting Section 30. Section 30 has to be interpreted on its own terms and since the language is clear, has to be given effect to, as it is.
- D f. In any event, a subordinate legislation like Education Regulations, cannot be invoked to interpret Section 30 or whittle down rights, obligations and entitlements under Section 30. Sections 30 and 31 together are a complete code for preparing the First Register. In this context, Education Regulations cannot be factored in for the purposes of interpretation, which is relevant only for Section 32 i.e. subsequent inclusions in the Register.
- E g. There is nothing in Sections 84 and 85 of the Bihar Reorganisation Act which militate against Sections 30 and 31 of the Pharmacy Act. They are general provisions to deal with the administration of the State, in the context of the new State of Jharkhand coming into existence, whereas Sections 30 and 31 of the Pharmacy Act are special provisions and in the field specified/occupied by the Pharmacy Act, they would prevail and operate.
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**POINT NO. 1 AND 2**

- G 12. We propose to deal with both the points together. It appears that after the enactment of Drugs and Cosmetics Act, 1940 which prescribed the standard of quality of drugs sold in India, the importance of the role played by a pharmacist was realized. The Drug Rules, made under the Drugs and Cosmetics Act, prescribed that the medicines which were compounded on the prescription of medical practitioner can only be sold directly by a pharmacist. In the absence of a qualified pharmacist, there was a threat to the general health of people in India. Therefore

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with a view to regulate the profession and practice of pharmacy, Pharmacy Bill of 1947 was introduced in the Parliament. It was referred to the Select Committee which made recommendations. Incorporating the same, the bill was passed. The statement of objects and reasons makes it clear that only persons with minimum standard of professional education should be permitted to practice the profession of pharmacy and for that purpose; it was proposed to establish a Central Pharmacy Council with powers to prescribe minimum standards of pharmacy education. It was also proposed to establish provincial registers of qualified Pharmacists. A B

13. After the Act came into force, erstwhile Bihar constituted Registration Tribunal which duly prepared the First Register of pharmacists and the State Government published the same as per Section 30 (4) of the Act. C

14. The Chapter I of the Act contains- short title, extent and commencement of the Act and definitions. It would be pertinent to note that Section 1 (3) states that Act will come into force at once, but Chapters III, IV, V shall take effect in a particular State from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf. Further proviso to the said Section states that where on account of the territorial changes brought about by the reorganization of States on the 1<sup>st</sup> day of November, 1956, Chapters III, IV and V shall take effect in the remaining part of that State from such date as the State Government may in like manner appoint.<sup>1</sup> Although it was argued that the bifurcation of Jharkhand took effect after 1956 therefore, the proviso to sub-section (3) of Section 1 is squarely applicable to Jharkhand, such arguments are clearly erroneous as it is apparent from the plain reading of the proviso itself. The application of the proviso was a onetime measure which was only applicable to the States Re-organization of States in 1956 as on 1<sup>st</sup> of November, 1956 and the application of this proviso cannot be extended beyond 01.11.1956 by way of interpretation of BROA. D E F

15. At this stage, it would be apt to refer to two definitions relevant for resolution of the dispute in this case. As per Section 2 (h) "register" means a register of pharmacists prepared and maintained under Chapter IV<sup>2</sup>. The term register connotes that both First Register as well as G

<sup>1</sup> This proviso was introduced by Act 24 of 1959, sec. 2 (w.e.f. 1-5-1960)

<sup>2</sup> This definition was introduced by Act 70 of 1976, sec. 2, for clauses (h), (i) and (j) (w.e.f. 1-9-1976) H

A subsequent register. Further, as per Section 2 (i), “registered pharmacist” means a person whose name is for the time being entered in the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy.

16. The Chapter II<sup>3</sup> of the Act contains the framework for the Pharmacy Council of India and its functions. Under Section 10 of the Act, the Pharmacy Council of India is empowered to make Education Regulations prescribing the minimum standard of education required to be qualified as a pharmacist.<sup>4</sup> In accordance therewith the Pharmacy Council notified the Education Regulations in the year 1953 which was subsequently replaced by the Education Regulations, 1972. These Regulations were repealed and replaced by the Education Regulations, 1981. As of now the Education Regulations, 1991 (repealing Education Regulations, 1981) are in force which were notified on 11.07.1992. It is to be noted that these Education Regulations have been in force now for past 50 years and have been implemented in all parts of the country uniformly. Section 11 of the Act provides for enforcement of the Education Regulations framed under Section 10 of the Act.

17. The Chapter IV of the Act, *inter alia*, provides for qualification, registration, renewal and removal of pharmacists from the register. Under Section 29 thereof it shall be the duty of the State Government to cause to be prepared a register of pharmacists for the State. Section 30 deals with the constitution of a Registration Tribunal consisting of three members entrusted with the powers of preparing the First Register. Section 31 prescribes qualification for registration in the First Register. These two provisions are extracted below-

F **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.

G (2) The State Government shall, by the same or a like notification, appoint a date on or before which applications for registration,

<sup>3</sup> Contains Sections 3 to 18 of the Act

<sup>4</sup> **10. Education Regulations.**-(1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist

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which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal. A

(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. B

(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. C

(5) The Registrar shall amend the register in accordance with the decisions 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 D

**31. Qualifications for entry on first register-**<sup>5</sup> 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 E

(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 <sup>6</sup> [\*\*\*] India, or F

(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 G

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<sup>5</sup> Substitute by Act 24 of 1959. sec. 9, for "A person shall be entitled" (w.e.f. 1-5-1960)

<sup>6</sup> The words "the Provinces at" omitted by the A.O.. 1950

- A (c) has passed an. examination recognized as adequate by the State Government for commoners 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 subsection (2) of section 30.
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18. When the Act was first enforced in the erstwhile Bihar there was neither a formal course in Pharmacy nor was there any Education Regulation made by the Central Council. The Section 31 stipulated qualifications for pharmacists, as a temporary measure, for preparation of First Register in the erstwhile Bihar. Section 32 of the Act prescribes qualifications for subsequent registration. According to Section 32 (2), after the Education Regulations were brought in force, only those persons who possess qualification prescribed by Education Regulations are eligible to be entered in the register of the pharmacists. There is no dispute about this fact.

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19. After formation of Jharkhand with effect from 15.11.2000, by reason of Section 3 of the BROA, the territories in the erstwhile Bihar were included in the Jharkhand. As a result those included territories ceased to be the territories of Bihar, but, Section 84 and 85 of BROA saved all the enactments in force immediately before 2000 and provided that the provisions of the reorganization of the Bihar [Section 3 to 6 in Chap 2, BROA], shall not be deemed to effect the change in territories to which any law in force applied. Further it is provided that any territorial reference in any law to the Bihar shall be construed, as meaning, the territories within the existing territories of Bihar before the appointed day. All the laws which are referred to in Section 84 of the BROA would continue to have effect unless they are modified by way of repeal or amendment by the appropriate Government i.e., Central or State Government, as the case may be.

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20. Further the term 'law' is defined in Section 2 (f) of BROA includes any enactment, ordinance, regulation, order, bye- law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing Bihar. Therefore, all the laws immediately in force before the appointed date in the erstwhile Bihar shall be deemed to be applicable to the

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territories of Jharkhand and the territories of Bihar for the purpose of applicability of laws shall be deemed to be part of territories of erstwhile State of Bihar before the appointed date.

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21. Reverting to the Act, from reading of Sections 31 and 32, it is very clear that the qualifications prescribed for entering the name of the pharmacists in the First Register is different from the qualifications prescribed for entering the name of the pharmacist in the subsequent register, after coming into force of Education Regulations. When the legislature enacted the Act, there were hardly any pharmacy colleges offering dedicated pharmacy course. Taking that into consideration, Parliament prescribed qualifications under Section 31 for a limited period till the framing of Education Regulations. After the Act came into force by reason of Sections 10 and 11 the Central Council was empowered to make Education Regulations prescribing minimum standards of Pharmacy education. Thus, Sections 30 and 31, in our considered opinion, were intended to be effective and enforceable only till such time the Central Council makes Education Regulations. This is the reason why Section 32 starts with the phrase '*after the date appointed under sub section (2) of section 30 and before education regulations have taken effect in the State.*' In such a case a person shall be entitled to have his name entered in the register if he carries on the profession of the pharmacy in the State and he satisfy the conditions prescribed by the State. As per sub-section (2) of Section 32, after enactment of the Education Regulations, a person shall be entitled to have his name entered in the register only if he possesses the qualifications as prescribed by Education Regulations. Thus, the qualifications as mentioned in Section 31 would be relevant only till such time of preparation of First Register under Section 30. In other words, the qualifications mentioned in Section 31 would be of no relevance at the time of subsequent registration under Section 32 and after the promulgation of Education Regulations.

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22. The question however, remains as to whether the First Register prepared by the erstwhile Bihar shall be deemed to be the First Register of the newly formed State of Jharkhand.

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23. The Act came to force in India, including erstwhile Bihar, in the year 1948. As per Section 29 (1), every State as soon as Chapter IV has taken effect, the State shall prepare a register of pharmacists by inference, such register is the First Register. Section 31 prescribes

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- A qualifications for those who would be entered into First Register. For the purpose of registration in the First Register, State Government shall constitute a Registration Tribunal and the First Register so prepared shall be published. The First Register prepared and published shall be a permanent register in relation to all pharmacists in the State of Bihar.
- B The same shall be given custody to the State Council constituted under the Section 19. A reading of sub-section (4) and (5) of Section 30 would show that an authority appointed by the State Government to hear appeals in relations to First Register, shall decide the question of entering a new name in the register or amending the same. Such facility is available after the date appointed under Sub section (2) of Section 30 and before
- C the enforcement of Education Regulations made by the Pharmacy Council of India.

24. There is no dispute that the First Register for the erstwhile Bihar after following the procedure contemplated under Section 30 of the Act. There is no doubt that as directed by the State Government it was duly published. Thus, there was a Statutory notification under the Section 30 (4) publishing the First Register of Pharmacists for the Bihar. What is the effect of such published First Register after the re-organization of the State in 2000?

25. The Article 3 of the Constitution *inter alia*, empowers the Parliament by law to form a new State by separation of territory from any State or by uniting two or more States. Article 4 is to the effect that the law made by the Parliament with reference to Article 3 may contain supplemental, consequential and incidental provisions. When a new State is formed by law made by Parliament, whether the laws made by the existing State out of which a new State is formed continue to apply to the territories included in the new State? When the existing State territory is reorganized by the Parliament there is no change in Sovereignty. It is only adjustment of territories by transferring some territories in the existing State to a newly formed State. Therefore, all the laws which were applicable to the territories of the re-organized State would continue to apply to the territories transferred to the new State until the latter either adapts or, subject to its competency amends or repeals the existing and applicable laws.

26. Whenever a law was made under the Articles 2, 3 and 4 of the Constitution of India, re-organizing the State, the Parliament included provisions to explicitly spell out such position as explained in paragraphs

above. The States Re-organizations Act of 1956<sup>7</sup>, Bombay Re-organization Act of 1960<sup>8</sup>, The Punjab Re-organization Act of 1966<sup>9</sup>,

<sup>7</sup> The State Re-organizations Act of 1956, Act XXXVII of 1956.

**119. Territorial extent of laws.-** The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

**120. Power to adopt laws.-** For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

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<sup>8</sup> Bombay Re-organization Act of 1960, Act XI of 1960.

**87. Territorial extent of laws.-** The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Bombay shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

**88. Power to adapt laws.-** For the purpose of facilitating the application in relation to the State of Maharashtra or Gujarat of any law made before the appointed day, the appropriate Government may, before the expiration of one year from that day, by order, made such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

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<sup>9</sup> The Punjab Re-organization Act of 1966, Act XXXI of 1966.

**88. Territorial extent of laws.-** The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

**89. Power to adapt laws.-** For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

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A Madhya Pradesh Re-organization Act of 2000<sup>10</sup>, Uttar Pradesh Re-organization Act of 2000<sup>11</sup> and Andhra Pradesh Re-organization Act of 2014<sup>12</sup> contained provision which laid down that the laws in existing

<sup>10</sup> Madhya Pradesh Re-organization Act of 2000, Act XXVIII of 2000.

**78. Territorial extent of Laws.**—The provisions of Part II of this Act shall not be deemed to have effected any change in the territories

B to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madhya Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be constituted as meaning the territories within the existing State of Madhya Pradesh before the appointed day.

**79. Power to adopt laws.**—For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from the day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.

D <sup>11</sup> Uttar Pradesh Re-organization Act of 2000, Act XXIX of 2000.

**86. Territorial extent of laws.**— The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling of Land Holding Act, 1961 and any other law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day.

**87. Power to adapt laws.**— For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

<sup>12</sup>Andhra Pradesh Re-organization Act of 2014, Act No. VI of 2014.

**100. Territorial Extent of laws.**— The provisions of Part II shall not be deemed to have affected any change in the territories to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and any other law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day.

**101. Power to adopt laws.**— For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration

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State would apply to all the territories transferred to form a new State. A

27. The BROA contains similar provisions in Sections 84 and 85 which read as under.

**84. Territorial extent of laws.-** The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the Bihar shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing Bihar before the appointed day. B

**85. Power to adapt laws.-** For the purpose of facilitating the application in relation to the Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, take such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. C D

**Explanation.-** In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government. E

28. A plain reading of Section 84 reveals the following. The provisions of Part II dealing with the reorganization of erstwhile Bihar into the existing Bihar and Jharkhand shall not be deemed to have effected any change in the territories to which any law in force before the appointed day extends or applies. Any territorial references to any law shall until provided by the competent legislature be construed as meaning the territories within the existing State of Bihar before the appointed day, when existing Bihar stood re-organized. F G

of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. H

A            29. The Section 84 contains two legal fictions first is that the reorganization of the Bihar would not affect the applicability of laws made by the State of Bihar to all territories included in it before reorganization and after the re-organization. In other words, a law made by Bihar shall be applicable to all the territories of erstwhile State of Bihar including the territories of State of Jharkhand even after reorganization. The Second fiction is that until Jharkhand provides for it by way of amendment or otherwise, territorial reference in a any law to the Bihar shall mean all the territories in the Bihar before reorganization. For instance, if Bihar had made a law as applicable to entire Bihar, it shall apply to the Bihar and Jharkhand until it is amended by the new State. The territories to which the said Act is made applicable would also include the territories which were included in the Jharkhand. Section 85 is an enabling provision which empowers both the States to make adaptations and modification of the law by way of amendment to the law as the applicable to newly formed State.

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D            30. We shall now consider four decisions of this Court which have a direct bearing on the principles summed up above. In *State of Punjab v. Balbir Singh*<sup>13</sup>, the Respondents who were government Servants challenged a government Order dt.28.10.1966 by which all of them were reverted from the post of sub-divisional officer. These orders were challenged, before the High Court of Punjab and Haryana, contending that they had become automatically confirmed as members of service and under the Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules, 1942 and therefore they could not have been reverted before complying with Article 311 (2) of the Constitution of India. The learned single judge allowed the writ petition and the resultant appeals were also dismissed by the division bench. Before this Court only submission was that the order on reversion having been received on or after 1.11.1966 i.e., appointed date is not saved by Section 88 of the Punjab Reorganization Act because being an administrative law it is not law. The submission was rejected by this Court observing as under –

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G            If this could be the position in the continuance of the law in the successor States, on what principles one can say that the administrative. order made by the erstwhile State of Punjab automatically lapsed and came to an end on and from the appointed

<sup>13</sup> (1976) 3 SCC 242

day on the coming into existence of the successor States. Is it possible to take the view that the Legislature when it made so many provisions in the Act in its various parts in regard to the matters already referred to, did not think it appropriate to make a provision for the continuance of the effect of the administrative orders passed by the Government of the erstwhile State of Punjab until the Governments of the Successor States modified or changed it? Or is it, as a matter of law and propriety, reasonable to think that the Legislature did not consider it necessary at all to make such an express provision, as the continuance of the effect of such orders was so obvious even without such a provision? In our judgment when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by; the Governments of the successor States. No other view is possible to be taken. The other view will merely bring about chaos in the administration of the new States. We find no principle in support of the stand that administrative orders made by the Government of the erstwhile State automatically lapsed and were rendered ineffective on the coming into existence of the new successor States.

31. In *Sher Singh v. Financial Commissioner of Planning, Punjab*<sup>14</sup>, the question was whether the Order of the competent authority under Punjab Security of Land Tenures Act, 1930 passed before the commencement of Punjab Reorganization Act, would continue to have effect after the appointed date. The contention of the appellant was that the order passed by the Punjab authority has become final and therefore he is entitled to have another holding of 50 acres in the State of Haryana. Referring to Section 88 of BROA which dealt with territorial extent of laws and Haryana Adaptation of laws (States and Concurrent) Orders 1966, this Court rejected the appeal observing as under-

11. A combined reading of these two clauses makes it clear that any order made or anything done or any liability incurred or a right accrued before, the 1st November, 1966 would not be affected by the coming into force of the order. These two clauses show

<sup>14</sup> (1987) 2 SCC 439

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A unambiguously that the respective State Governments would be  
entitled to give effect to orders passed before 1st November, 1966,  
declaring the surplus area by utilizing them for the re- settlement  
of the tenants, despite the Re-organization of the State of Punjab  
The orders passed will be respected by both the States. The fact  
B that the land belonging to a particular owner, under fortuitous  
circumstances, fall in the two newly formed States, will not in any  
way affect the operation of the orders which had become final  
prior to 1st November, 1966. To accept the Appellant's contention  
would create anomalies. Persons against whom proceedings under  
C the Act were taken and became final prior to 1st November, 1966,  
would be entitled to claim lands in both the States while those  
whose petitions are pending on the date the States Re-organization  
Act came into force would be in a disadvantageous position. This  
is not the object of the Act. Nor the scheme behind it. The States  
Re-organization was a historical accident. The land owners cannot  
D take advantage of this accident, to the detriment of ejected tenants  
or tenants in need of re-settlement.

32. *Dayanand v. Union of India*<sup>15</sup> is a case dealing with  
entitlement of benefits, for employees appointed after 1.11.1966 (appointed  
day for bifurcation of erstwhile State of Punjab), under Punjab  
Government National Emergency (Concession) Rules, 1965 (law made  
E by the erstwhile Punjab State). This Court relied upon the dictum of  
*State of Punjab v. Balbir Singh* to conclude that benefits under Punjab  
Government National Emergency (Concession) Rules, 1965 needs to be  
extended and reasoned as under-

4. In the context of applicability of an administrative order of the  
F Government of State of Punjab issued prior to 1.11.1966 it was  
held by this Court in *State of Punjab and Ors. v. Balbir Singh  
and Ors.* that by virtue of Section 88 of the Punjab Reorganisation  
Act, 1966, an administrative order made by the erstwhile State  
did not automatically lapse and continued to be in force, effective  
G and binding on the successor State unless modified and repudiated.  
There can be no doubt that The Punjab Government National  
Emergency (Concession) Rules, 1965 which fall within the  
definition of "law" in Section 2(g) of the Punjab Reorganisation  
Act, 1966 continued in force and were effective in the Union

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<sup>15</sup> (1996) 7 SCC 47

Territory of Chandigarh until and unless modified, changed or repudiated by the Union Territory Administration. The question, therefore, is whether there was any modification, change or repudiation of the said 1965 Rules by the Union Territory administration after 1.11.1966? It may be mentioned that the Punjab Recruitment of Ex-servicemen Rules, 1982 repealed the Punjab Government National Emergency (Concession) Rules, 1965 but the saving clause therein preserved the rights which had accrued to any person under the repealed rules. All the employees, in these matters were appointed after 1.11.1966 but before the application of 1982 Rules. There is no controversy that if the 1965 Rules continued to be in force in the Union Territory after 1.11.1966 unless repudiated or repealed, the concerned employees in these matters, subject to fulfillment of the conditions of eligibility under the 1965 Rules, would be entitled to its benefit. The question for consideration, therefore is whether the 1965 rules were modified, repudiated or repealed in their applicability to these employees?

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7. It is, therefore, clear that the Punjab Government National Emergency (Concession) Rules 1965 continued to apply in the Union Territory of Chandigarh even after 1.11.1966 till modified, changed or repudiated by the Union Territory Administration and they continued to apply to the employees appointed in the Union Territory after 1.11.1966 who were eligible for the benefit of those rules. This is so because these rules, relate to matters for which the Central Civil Services Rules were not applied to employees in Class II, III & IV Posts. The contrary view taken by the Tribunal and the High Court cannot, therefore, be upheld.

33. The effect of Sections 84 and 85 of the BROA came up for consideration yet again in *Commissioner of Commercial Taxes, Ranchi v. Swarna Rekha Cokes and Coals (Pvt.) Ltd.*<sup>16</sup>. Whether on bifurcation of Bihar and on creation of Jharkhand (comprising territories which before the appointed date were the territories of Bihar), benefits flowing from the industrial policy of the erstwhile State of Bihar and the notification issued under the Bihar Finance Act would enure to the benefit of industries in Jharkhand after the appointed date? This was the question which fell for consideration before this Court. It was contended that

<sup>16</sup> (2004) 6 SCC 689

A unless and until similar exemption is granted by the Jharkhand, the dealers were bound to pay tax without claiming any benefits under Industrial Policy. This Court referred to Section 84 and 85 of BROA as well as earlier decisions of this Court *State of Punjab v. Balbir Singh, Sher Singh v. Financial Commissioner of Planning, Punjab, Dayanand v. Union of India* and held as follows-

B The language in these sections is clear and unambiguous. **These sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new Jharkhand. They continue in force until and unless altered, repealed or amended. ... By virtue of Section 84, the territorial references in any such law (which includes the notification in question), to the State of Bihar shall be construed as meaning the territories within the existing State of Bihar before the appointed day, until otherwise provided by a competent Legislature or other competent authority.** A  
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conjoint reading of both these provisions makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. To facilitate their application in respect of the State of Bihar or Jharkhand, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law as it may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect. After their amendment or alteration, they shall have effect subject to the adaptations and modifications made.

(emphasis supplied)

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H 34. From our above discussion, we may sum up the principles with reference to a law, made under Article 3 of the Constitution of India reorganizing the existing State and the application of the laws that were in force in the parent State to the newly formed re-organized State.

This would be necessary because in our considered opinion, the First Register published in Bihar before reorganization would be deemed to be the First Register of newly formed Jharkhand to the extent it contains those pharmacists who were natives of the territories that were transferred to Jharkhand. A

35. When a State as forming part of Indian nation is re-organized, in law in so far as application of laws is concerned, the following three things would happen namely; (i) the existing State (Parent State) which made various laws, would continue to exist; (ii) the new State so formed by transferring some territories will be deemed to be the territories of the parent State for the purpose of applicability of the laws; and (iii) those laws made by parent State shall continue to apply to new State until they are modified or amended by a competent legislature in relation to new State and the 'law' as defined in the definition Clause would be the law which was in force in the existing State which would be enforceable in the newly formed State. B C

36. At the cost of repetition, we may mention that under Article 3 of the Constitution the Parliament can alter, amend, amalgamate, form new States, diminish or increase area of a State. The principle of 'clean slate' as applicable in international law is not applicable when reorganization takes place under Article 3 of the Constitution.<sup>17</sup> The reorganized States do not usually start as *tabula rasa*, rather they are successors of a pre-existing erstwhile States. Under the BROA, the Jharkhand was carved out of the Bihar and the two separate states came into existence on 15.11.2000. If the laws in force were to lapse on the day the division was effected, a chaotic situation would have emerged inasmuch as the newly created State would be rendered a State without laws. To avoid such situation, provisions like Sections 84 and 85 of BROA have been enacted to maintain continuity, and at the same time authorizing the States to make such modifications and adaptations as are considered necessary by mere issuance of orders within two years, and thereafter by legislation. D E F

37. As defined earlier 'law' includes 'other instruments having the force of law'. In view of use of the word 'includes', the definition of 'law' under Section 2(f) shall be interpreted exhaustively. In view of the above discussion, we hold that the First Register prepared by the Bihar has the force of law under Section 2(f) of the BROA. G

<sup>17</sup> Supra, at 13

A           38. In view of the above, we may conclude that when the First  
Register of Pharmacists prepared by the Registration Tribunal was  
published by the Government of Bihar under subsection (4) of Section  
30, the same is conclusive and any amendments by way of inclusions  
B can be carried out till the framing of the Education Regulations by the  
Pharmacy Council of India. For doing this the competent authority may  
take into consideration the qualifications as prescribed by Section 31 of  
the Act. However, after the coming into force of the Education  
Regulations as well as at the time of subsequent Registration, Government  
has to necessarily adhere to the Education Regulations. Any person who  
C does not satisfy the qualifications as per the Education Regulations shall  
not be entitled to seek entry in the Pharmacy register. In that view of the  
matter, when the State of Bihar is precluded from preparing the First  
Register again, then the State of Jharkhand is equally not entitled in law  
to prepare the First Register again. The High court of Jharkhand therefore  
has come to correct conclusion in this regard.

D           39. At this stage we may mention that the High Court has not  
considered the effect of Section 84 of BROA fully with reference to  
First Register, though it came to the conclusion that there was no need  
for preparing the First Register all over again. The First Register for the  
State of Jharkhand is the register already prepared for the undivided  
E Bihar including all the pharmacists who may now be residing in the State  
of Jharkhand.

F           40. In the earlier part of the judgment we have considered the  
effect of Section 84 on the First Register prepared by the Bihar. This  
was not specifically urged before us. Be that as it may, as already  
observed by us, whenever a newly formed State desired to undertake  
the exercise of preparing the First Register all over again by adopting  
the law such empowering provisions were specifically made. We may  
extract such provisions

**ANDHRA PRADESH** [Andhra A.L.O., 1954 (01.10.1953)]

G           **33A. Special provision for preparation of the Register of  
Pharmacists for the State of Andhra.**- (1) Notwithstanding  
anything contained in this Chapter, such person as may be  
authorized by the State Government of Andhra in this behalf  
(hereinafter called the authorized Officer) shall prepare a separate  
Register of Pharmacists for the State of Andhra as hereinafter

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provided and that register shall, for all purposes be deemed to be the register prepared under this Act. A

MAHARASHTRA [S.O. 2814, published in Gazette of India, 19.08.1964, Pt.II, S. 3(ii), Ext., p. 717 (722, 723)]

**29A. Provision in respect of registers of pharmacists for the State of Maharashtra and the State of Gujarat.** – (1) As soon as possible after the date on which the Bombay State Pharmacy Council (Re-organisation) Order, 1964, made under Section 4 of the Inter-State Corporation Act, 1957, comes into force, the Maharashtra State Pharmacy Council shall, notwithstanding anything contained in Ss. 30, 31 and 32, prepare and maintain thereafter a register of the pharmacists for the State of Maharashtra. The register shall include the name of – B  
C

(a) All pharmacists included in the register of pharmacists for the former State of Bombay duly prepared and maintained under S.29 whose residential addresses as shown therein on the aforesaid date do not fall in the territories of the State of Gujarat or in the area of the former State of Bombay transferred to the State of Mysore or Rajasthan on the 1<sup>st</sup> November, 1956, and in the register for the former State of Madhya Pradesh prepared and maintained likewise, whose residential addresses as shown therein on the aforesaid date fall in the territories of the State of Maharashtra: D  
E

Provided that, the names of the pharmacists in the register of pharmacists for the former State of Madhya Pradesh shall not be included in the register for the State of Maharashtra until the Maharashtra State Pharmacy Council starts functioning and operating in the Vidarbha region of this State of Maharashtra under clause (2) of sub-section (5) of S.19-A; F

41. In so far as BROA is concerned, though the Act was adopted under Sections 84 and 85 of BROA, no such amendment has been made. In that view of matter applying section 84 we are inclined to hold that First Register prepared by the erstwhile Bihar will be deemed and continues to be the First Register for the Jharkhand. This does not however prohibit the Jharkhand to take up subsequent registration as per Sections 32 and 32A and 32B. In such an event concerned authority of Jharkhand has to follow the Education Regulations as amended from G  
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A time to time by the Pharmacy Council of India.

B 42. The Section 86 of BROA, explicitly empowers this Court to construe the law in a manner to effectively implement Sections 84 and 85. In light of having considered all the provisions of BROA, we are of the opinion, that all pharmacists in the First Register of pharmacist for the former State of Bihar, whose residential address, as shown therein, fall in the territory of State of Jharkhand, shall be construed to be part of First Register of Jharkhand. Future inclusion of additional names in the Register is to be made strictly in terms of Section 32 (2) of the Pharmacy Act. We further hope that State of Jharkhand will take all necessary steps to constitute a State council in near future, if not already undertaken.

C Consequently the High Court Order to the extent of quashing the notification of State Government of Jharkhand, dated 12.11.2001, constituting the Registration Tribunal in terms of Section 30 and advertisement calling for applications in terms of Section 31 is upheld.

D 43. In light of the above analysis and discussion, we order hereunder-

- a. First Register prepared by erstwhile State of Bihar is to be treated as the First Register for newly formed State of Jharkhand and State of Bihar.
- E b. The First Register as prepared by the erstwhile State of Bihar is to be bifurcated based on the territorial nexus with the residential address as provided by the pharmacists at the time of registration.
- F c. The State of Jharkhand is at liberty to take all necessary steps to constitute a State Council.
- G d. Those pharmacists who are registered in the First Register of the erstwhile State of Bihar, before the enforcement of Education Regulation made by the Central Pharmacy Council, and who do not wish to practice in the State in which their residential address falls are at liberty to register themselves in the other State in accordance with Section 32 (2) of the Pharmacy Act. Here we make it clear that such of those pharmacists whose names were registered in the First Register prepared by the erstwhile State of Bihar, need to formally seek registration under Section 32(2) of the Act in the State of

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Jharkhand and they need not satisfy the qualification prescribed A  
by the Education Regulation.

**Illustration No.1-** If 'A' has his name registered in the first register  
of erstwhile State of Bihar. He is at liberty to get his name  
registered in the State of Jharkhand as per Section 32 (2) of the  
Act. Further 'A' need not fulfill the qualification as prescribed B  
~~under~~ the Education Regulation.

44. With the aforesaid observations and directions, the appeal  
stands disposed of. There shall be no order as to costs.

Devika Gujral

Appeal disposed of. C