

A PHARMACY COUNCIL OF INDIA

v.

DR. ATMARAM DARIYANI & ORS.

(Civil Appeal No. 8382 of 2017)

B JULY 03, 2017

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

C *Pharmacy Act, 1948 – ss.30, 31, 32 – Whether the new State of Chhattisgarh is competent to constitute the Registration Tribunal u/s.30 for the purpose of preparation of First Register; and whether the Registration Tribunal was competent to undertake the exercise of renewal of the registration of pharmacists who are already included in the First Register of pharmacists prepared by the erstwhile State of Madhya Pradesh – Held: First Register prepared by erstwhile State of Madhya Pradesh is to be treated as the First Register for newly formed State of Chhattisgarh and State of Madhya Pradesh – The First Register as prepared by the erstwhile State of Madhya Pradesh is to be bifurcated based on the territorial nexus with the residential address as provided by the pharmacists at the time of registration – Those pharmacists who are registered in the D First Register of the erstwhile State of Madhya Pradesh, 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 E other State in accordance with s.32 (2) of the Act – Such of those F pharmacists whose names were registered in the First Register prepared by the erstwhile State of Madhya Pradesh, need to formally seek registration u/s.32(2) of the Act in the State of Chhattisgarh and there need not satisfy the qualification prescribed by the Education Regulation – The constitution of the Registration Tribunal by the State of Chhattisgarh and consequent registrations carried G out by the aforesaid Registration Tribunal are invalid and illegal – Madhya Pradesh Reorganization Act, 2000.*

**Disposing of the appeal, the Court**

**HELD: 1. The First Register opened by the erstwhile State of Madhya Pradesh is deemed to be the First Register for the**

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State of Chhattisgarh based on the territorial nexus, therefore there is no need to open yet another First Register for the State of Chhattisgarh. Consequently there is no requirement of constituting a Registration Tribunal under Section 30 of the Pharmacy Act. Insofar as the renewal is concerned, once the First Register prepared by the erstwhile State of Madhya Pradesh is deemed to be also the First Register of State of Chhattisgarh, there cannot be any prohibition for the Pharmacy Council of Chhattisgarh to undertake renewal under Section 32(2) or as per law. [Paras 9, 10][236-E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8382 of 2017.

From the Judgment and Order dated 24.07.2002 of the High Court of Jabalpur in Writ Petition No. 1472 of 2002.

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

**N. V. RAMANA, J.** 1. Leave granted.

2. This appeal is against the Judgment dated 24<sup>th</sup> July, 2002 passed by the learned Single Judge of the High Court of Madhya Pradesh, Jabalpur. By the said Judgment, the High Court allowed the Writ Petition filed by the respondents injuncting Chhattisgarh Pharmacy Council from proceeding with renewal of registration granted by the Madhya Pradesh Pharmacy Council before the reorganization of the latter under the Madhya Pradesh Reorganization Act, 2000 ("MROA" for brevity). By a separate judgment in C.A. No. 8121 of 2004, we disposed of another connected matter giving certain directions with reference to various provisions of the Pharmacy Act, 1948 and the Bihar Reorganization Act, 2000. In that case, the issue was whether the new State of Jharkhand can again undertake exercise under Section 30 of the Pharmacy Act for

- A preparing the First Register of Pharmacists having regard to Sections 84 and 85 of the Bihar Reorganization Act which is same as the laws made by the erstwhile Bihar and their application to the territories included in the new State of Jharkhand. The law laid down therein and some of the conclusions to the extent they are relevant would also apply to this appeal.
- B However, having regard to the difference in the factual background, we propose to deal with this appeal by this separate order.

C 3. After coming into force of the Pharmacy Act, the State of Madhya Pradesh prepared the First Register. In 1953, the Pharmacy Council framed Education Regulations which were amended from time to time, the latest being the Education Regulations, 1991 notified on 11.07.1992. The State of Chhattisgarh was formed comprising certain territories of the erstwhile Madhya Pradesh and Sections 78 and 79 of the Reorganization Act deal with territorial extent of laws and power to adapt laws. It may be mentioned that by reason of these two provisions, the laws made by the State of Madhya Pradesh before reorganization shall continue to apply even to the territories which stood included in the new State of Chhattisgarh.

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E 4. The State of Chhattisgarh issued a notification on 01.03.2001 purporting to constitute Registration Tribunal. The said Tribunal sought to undertake registration as per the qualifications laid down under Section 31 of the Pharmacy Act to prepare the First Register of pharmacists. The Pharmacy Council of India, the appellant herein addressed the Secretary to Government in Health and Family Welfare Department, Government of Chhattisgarh and the Registrar of the Registration Tribunal requesting to withdraw the notification dated 01.03.2001, cancel registrations if done other than under Section 32(2) of the Pharmacy Act and make the register of pharmacists for the State of Chhattisgarh by bifurcating from the register of pharmacists of Madhya Pradesh. The appellant also requested to constitute the State Pharmacy Council for Chhattisgarh.

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G 5. In the meanwhile, the first respondent Dr. Atmaram Dariyani, President of Madhya Pradesh Pharmacists Association filed Writ Petition No. 1472 of 2002 for a Writ of Prohibition against Chhattisgarh Pharmacy Council directing not to usurp the function of Pharmacy Council of Madhya Pradesh in renewing the registration of pharmacists who were not First Registered with Chhattisgarh Pharmacy Council. The High Court after considering the Writ Petition in the light of Sections 30 and

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34, allowed the writ petition observing as under:

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“Otherwise also, it is clear from the provisions of Sections 30 and 34 of the Act that Chhattisgarh Pharmacy Council cannot renew the registration of an incumbent whose name has not been entered in the First Register maintained by the Chhattisgarh Pharmacy Council. Right of renewal in my opinion is available to Chhattisgarh Pharmacy Council only with respect to those pharmacists who have chosen to get their names entered in that Council. M.P. Council has jurisdiction to renew those who have not moved out to Chhattisgarh. In my opinion, for exercising right of renewal, entry in the First Register is necessary. As a result of reorganisation, it has become necessary to undertake this exercise by respondent Nos. 4/5. In my opinion, though initial registration may have been granted by M.P. Pharmacy Council but after the date on which Pharmacy Council in Chhattisgarh has been constituted and formation of State of Chhattisgarh has taken place, Chhattisgarh Council can renew registration for the period falling due after date on which entry of the pharmacists has been made in First Register by Chhattisgarh Council.

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In view of above, it is directed that Chhattisgarh Pharmacy Council shall not renew any registration granted by the Madhya Pradesh Pharmacy Council which has not been entered in the First Register of the Chhattisgarh Pharmacy Council. In the facts and circumstances, costs on parties”.

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6. In this appeal it is mainly contended by the Pharmacy Council of India that the observations and directions of the High Court are capable of being misused and amount to validating the preparation of First Register under Section 30 of the Pharmacy Act yet again for the State of Chhattisgarh. According to the appellant, it would result in registering even those pharmacists who only satisfy qualification under Section 31, ignoring the mandatory provisions in Section 32 of the Pharmacy Act.

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7. We have perused the material available on record. The fundamental question which requires our consideration is whether the new State of Chhattisgarh is competent to constitute the Registration Tribunal under Section 30 for the purpose of preparation of First Register; and secondly, whether the Registration Tribunal was competent to undertake the exercise of renewal of the registration of pharmacists

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A who are already included in the First Register of pharmacists prepared by the erstwhile State of Madhya Pradesh.

8. Insofar as the first question is concerned, we have considered the issue in detail in our judgment in C.A. No. 8121 of 2004. We may refer to following paragraphs-

B 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.

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G 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>1</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.

37. As defined earlier 'law' includes 'other instruments having the force of law'. In view of use of the word 'includes', the

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<sup>1</sup> *Supra*, at 13

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. 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 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 court of Jharkhand therefore has come to correct conclusion in this regard. B  
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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 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 G

Andhra Pradesh [Andhra A.L.O., 1954 (01.10.1953)]

A           **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  
 B           separate Register of Pharmacists for the State of Andhra as hereinafter provided and that register shall, for all purposes be deemed to be the register prepared under this Act.

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

C           **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  
 D           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 –

E           (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:

G           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;

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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 time to time by the Pharmacy Council of India.

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. 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.

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.
- 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.
- c. The State of Jharkhand is at liberty to take all necessary steps to constitute a State council.

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

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9. In view of the law laid down by us as above the First Register opened by the erstwhile State of Madhya Pradesh is deemed to be the First Register for the State of Chhattisgarh based on the territorial nexus, therefore there is no need to open yet another First Register for the State of Chhattisgarh. Consequently there is no requirement of constituting a Registration Tribunal under Section 30 of the Pharmacy Act.

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10. Insofar as the renewal is concerned, once the First Register prepared by the erstwhile State of Madhya Pradesh is deemed to be also the First Register of State of Chhattisgarh, there cannot be any prohibition for the Pharmacy Council of Chhattisgarh to undertake renewal under Section 32(2) or as per law.

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11. In view of the above, we dispose of this appeal with the following direction.

- G a. First Register prepared by erstwhile State of Madhya Pradesh is to be treated as the First Register for newly formed State of Chhattisgarh and State of Madhya Pradesh.
- b. The First Register as prepared by the erstwhile State of Madhya Pradesh is to be bifurcated based on the territorial nexus with
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the residential address as provided by the pharmacists at the time of registration. A

- c. Those pharmacists who are registered in the First Register of the erstwhile State of Madhya Pradesh, 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 Madhya Pradesh, need to formally seek registration under Section 32(2) of the Act in the State of Chhattisgarh and there need not satisfy the qualification prescribed by the Education Regulation. B  
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**Illustration No.1-** If 'A' has his name registered in the First Register of erstwhile State of Madhya Pradesh. He is at liberty to get his name registered in the State of Chhattisgarh as per Section 32 (2) of the Act. Further 'A' need not fulfill the qualification as prescribed under the Education Regulation. D

- d. The constitution of the Registration Tribunal by the State of Chhattisgarh and consequent registrations carried out by the aforesaid Registration Tribunal are invalid and illegal. E

12. Accordingly this appeal is disposed of in terms of above directions. There shall be no order as to costs.