

GAHC010047982024



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

Case No. : WP(C)/1332/2024

GIRIJANANDA CHOWDHURY UNIVERSITY
HATHKHOWAPARA, AZARA, GUWAHATI, PIN-781017,
DIST- KAMRUP (M), ASSAM,
REP. BY ITS REGISTRAR

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVERNMENT
OF ASSAM, MEDICAL EDUCATION AND RESEARCH DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY

TO THE GOVERNMENT OF ASSAM
MEDICAL HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR GUWAHATI-781006

3:THE PHARMACY COUNCIL OF INDIA
NBCC CENTER THIRD FLOOR
PLOT NO.2 COMMUNITY CENTER
MAA ANANDAMAI MARG
OKHLA PHASE 1
NEW DELHI
110020

4:SRIMANTA SANKARDEV UNIVERSITY OF HEALTH AND SCIENCE
NARKASUR HILL TOP
BHANGAGARH
GUWAHATI-781005.
REPRESENTED BY ITS REGISTRA

Advocate for the Petitioner : MR. M K CHOUDHURY
Advocate for the Respondent : SC, HEALTH

**BEFORE
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing: 04.04.2024

Date of order: 08.04.2024

ORDER

Heard M. K. Choudhury, learned senior counsel, assisted by Mr. S. Chakraborty, learned counsel, appearing on behalf of the petitioners, in WP(c)1332/2024 and WP(c)1618/2024; Dr. Ashok Saraf, learned senior counsel, assisted by Mr. P. K. Bora, learned counsel, appearing on behalf of the petitioner in WP(c)1661/2024; Mr. D. K. Bhattacharyya, learned counsel appearing on behalf of the petitioners in WP(c)1674/2024; Mr. A. R. Bhuiyan, learned counsel appearing on behalf of the petitioners in WP(c)1737/2024; Mr. N. Deka, learned counsel appearing on behalf of the petitioners in WP(c)1751/2024; and Mr. D. Sarmah, learned counsel appearing on behalf of the petitioners in WP(c)1759/2024.

Also heard Mr. D.P. Borah, learned standing counsel, Health & Family Welfare Department, Government of Assam; Mr. K. Gogoi, learned CGC; Pharmacy Council of India; and Mr. B. Gogoi, learned standing counsel, Srimanta Sankaradeva University of Health Sciences; appearing on behalf of their respective respondents.

2. This Court, vide order, dated 22.03.2024, while issuing notice in the matter, had also issued a notice on the interim prayer, making it returnable on 03.04.2024. On 03.04.2024, on the prayer made on behalf of the learned standing counsel, appearing on behalf of the Health and Family Welfare

Department, this matter was directed to be listed on 04.04.2024. On 04.04.2024, the parties made their respective submissions with regard to the interim order as prayed for in the present proceedings.

3. The challenge involved in the above-noted writ petitions; pertains to a Notification, dated 07.11.2023, issued by the Commissioner and Secretary to the Government of Assam, Medical Education and Research Department, proposing to hold an Exit Examination for candidates who have completed their respective Pharmacy courses from institutions not affiliated to the Srimanta Sankaradeva University of Health Sciences. The petitioners have also assailed a Notification, dated 28.02.2024, issued by the said Srimanta Sankaradeva University of Health Sciences scheduling the Exit Examination in terms of the Notification, dated 07.11.2023, for the candidates completing their Diploma in Pharmacy as well as Bachelor Degree in Pharmacy, on 21.04.2024.

4. The petitioners in WP(c)1332/2024; WP(c)1618/2024; and WP(c)1661/2024; are the private Universities which with due approval of the Pharmacy Council of India are offering courses in Pharmacy in their respective Universities and the petitioners in WP(c)1661/2024; WP(c)1674/2024; WP(c)1737/ 2024; WP(c)1751/2024 and WP(c)1759/2024; are students who have completed their respective Pharmacy courses and both the set of petitioners are aggrieved by the stipulations as made in the Notification, dated 07.11.2023, and Notification, dated 28.02.2024. The Government of Assam in the Medical Education and Research Department vide a Notification, dated 07.11.2023, issued for the purpose of developing the nursing/ pharmacy/allied

health science education in the State of Assam and to bring the same to all India standard with a view to produce quality graduates/diploma holders in nursing/ pharmacy/allied health science courses proceeded to lay down stipulations for undergoing the said courses. With a view to advance the said objective, the said Notification, dated 07.11.2023, mandates that all institutions imparting education in nursing/pharmacy/allied health science education in the State of Assam, to obtain affiliation from the Srimanta Sankaradeva University of Health Sciences.

The said Notification, dated 07.11.2023, more particularly, Clause X(ii) lays down that as far as the Pharmacy courses are concerned, the same would be governed by the guidelines issued by the Srimanta Sankaradeva University of Health Sciences and the respective councils. The said Notification, dated 07.11.2023, further in Clause XI mandates that candidates not passing out from institutions affiliated to the Srimanta Sankaradeva University of Health Sciences including those from the private Universities of the State, shall have to pass the Exit Examination to be conducted by the Srimanta Sankaradeva University of Health Sciences and it is only those candidates who pass the said Exit Examination, shall be eligible for registration under the State council. In terms of the prescription as made in the said Notification, dated 07.11.2023, the Srimanta Sankaradeva University of Health Sciences vide a Notification, dated 28.02.2024, proceeded to schedule the Exit Examination as contemplated under Clause XI of the Notification, dated 07.11.2023, on 21.04.2024. The said Exit Examination was to be so conducted for both diploma holders in Pharmacy course as well as bachelor degree holders in Pharmacy course who have completed their respective courses upto 31.12.2023.

5. It is the aforesaid stipulation made in the Notification, dated 07.11.2023, and in the Notification, dated 28.02.2024, that are being considered at this stage by this Court for the purpose of considering the interim prayers prayed for in the present proceedings.

6. Dr. Saraf, learned senior counsel for the petitioners in WP(c)1661/2024; and Mr. M. K. Choudhury, learned senior counsel for the petitioners in WP(c)1618/2024 and WP(c)1332/2024, have made their submissions on behalf of the petitioners who are the Universities constituted by the Acts of the legislature of the State and who are offering Pharmacy courses in their respective Universities.

7. The learned senior counsels, at the outset, have submitted that the challenge to the Notification, dated 07.11.2023, and Notification, dated 28.02.2024, have been so made on the ground that neither the State Government nor the Srimanta Sankaradeva University of Health Sciences have the requisite power to prescribe holding of the Exit Examination for candidates clearing Pharmacy courses and/or to hold any such examination.

8. It has been contended that the Notification, dated 07.11.2023, prescribing the stipulations with regard to the Pharmacy courses including holding of the Exit Examination as well as the issuance of the Notification, dated 28.02.2024, issued by the Srimanta Sankaradeva University of Health Sciences have been so done without there being any jurisdiction vested upon the said authorities to issue such Notifications. It is contended by the learned senior counsels that the

pharmacy education as well as the practice in pharmacy is regulated by the Pharmacy Act, 1948.

9. It is further contended by the learned senior counsels that the Pharmacy Act, 1948, is a complete Code by itself and a special law in relation to the subject of Pharmacy. The learned senior counsels have further submitted that under the Pharmacy Act, 1948, it is the Pharmacy Council of India which has been empowered to determine and enforce the qualification required for a person to act as a pharmacist in India including approving courses of study and institutions which may offer such courses of study to enable one to practice the profession of a pharmacist. By referring to the statements of objects and reasons of the Pharmacy Act, 1948, it is submitted that it is the Pharmacy Council of India that is being empowered to regulate the profession and practice of Pharmacists in the country.

10. The learned senior counsels have also submitted that the legislature having clearly envisaged only one statutory autonomous body to undertake all these integrated functions; it is impossible to conceive that in the very same occupied field, another authority would seek to assume/usurp the jurisdiction thereby creating unsavoury practical problems, conflicts and inconsistencies, thereby, defeating the entire objective sought to be achieved by the Pharmacy Act, 1948.

11. The learned senior counsels, by referring to Section 10 of the Pharmacy Act, 1948; have submitted that it is the Pharmacy Council of India which has

been empowered to frame educational regulations prescribing the minimum standard of education required for qualification as a pharmacist. By further referring to Section 12 of the Pharmacy Act, 1948; the learned senior counsels have submitted that under this provision, any authority in the State that is empowered to conduct a course of study in Pharmacy, may apply to the central Council for approval of the course in accordance with the educational regulation.

12. The learned senior counsels have further submitted that likewise any authority which conducts an examination in a State for Pharmacy, may apply to the Pharmacy Council of India for approval of such examination. It is submitted that a student who has completed an approved course and passed an approved examination may therefore be registered as a Pharmacist subject to meeting other requirements. It is further submitted that therefore, under the Pharmacy Act, 1948, the approval of the Pharmacy Council of India in conducting any course of Pharmacy is mandatory and in the absence of same, no student can be awarded Degree or Diploma for such a course which makes him entitled for registration as a Pharmacist to practice the profession of Pharmacist in India.

13. The learned senior counsels have accordingly submitted that the Pharmacy Council of India not only regulates the educational aspects leading to the acquisition of the qualification required to function as a pharmacist but also plays a vital role in regulating an entry into the profession. The learned senior counsels have also submitted that the Pharmacy Council of India for the purpose of implementing the provisions of the Pharmacy Act, 1948, has framed a number of regulations prescribing the minimum standard of education as well as towards regulating the subject of Pharmacy in India.

14. The learned senior counsels have also submitted that the Pharmacy Council of India in exercise of its powers conferred under the provisions of Sections 10 and 18 of the Pharmacy Act, 1948, and with the approval of the Central Government; has framed the "Diploma in Pharmacy Exit Examination Regulation, 2022", which has come into force with effect from 24.02.2022. The objective of the said Regulation is to ensure that a candidate applying for registration as a Pharmacist with the State Council of Pharmacy has undergone Pharmacy education and a comprehensive practical training programme in Diploma in Pharmacy course as provided in the Regulation of 2022. It is provided in the said Regulation of 2022 that after passing the Diploma in Pharmacy Exit Examination, a candidate shall be entitled to registration as a Pharmacist subject to fulfillment of conditions as enumerated in section 32(2) of the Pharmacy Act, 1948. It is further provided that after coming into force of the said Regulation of 2022, the candidates who have completed the approved course of Diploma in Pharmacy and having qualified in the Diploma in Pharmacy Exit Examination only will be eligible for registration as a Pharmacist under Section 33 of the said Pharmacy Act, 1948.

15. The learned senior counsels have further submitted that in terms of the said Regulation of 2022; the Pharmacy Council of India vide a circular, dated 22.12.2023, has notified that the Council is going to conduct the Diploma in Pharmacy Exit Examination in July - September 2024, for the students who have pursued the course of Diploma in Pharmacy in the session 2022-2024. Accordingly, it was provided that the students who were admitted during the academic session 2022-2023 for the Diploma in Pharmacy Course and passed-out in the academic session 2023-24; will be permitted to register as

Pharmacists only after they qualify the said Exit Examination under the Regulation of 2022 and fulfill the other prescribed conditions under Section 32 of the Pharmacy Act, 1948.

16. The learned senior counsels, in the above premises, submits that the Diploma in the Exit Examination as contemplated is only for the candidates pursuing Diploma in Pharmacy education and the same is made effective prospectively for the candidates who had passed-out the said course during the year 2023-2024.

17. The learned senior counsels, by referring to the Notification, dated 07.11.2023, have submitted that the Government of Assam in the Medical Education and Research Department has now proceeded to regulate the Pharmacy profession and have prescribed an Exit Examination. By referring to clause XI of the said Notification, dated 07.11.2023, the learned senior counsels have submitted that the Exit Examination as contemplated therein is only for the candidates passing-out from the institutions not affiliated to the Srimanta Sankaradeva University of Health Sciences. The learned senior counsels have also submitted that the Srimanta Sankaradeva University of Health Sciences, vide Notification, dated 28.02.2024, has fixed 21.04.2024, as the date on which the Exit Examination for Diploma in Pharmacy and Bachelor in Pharmacy passed candidates, would be held separately.

18. The learned senior counsels, by referring to the Notification, dated 07.11.2023, have submitted that a perusal of the opening paragraphs of the

said Notification would reveal that the same was so issued to frame detailed norms with regard to the physical infrastructure, academics, teaching facilities, etc., for opening new nursing/pharmacy, allied health Science courses in the State. However, a further perusal of the Notification would reveal that the same has been made applicable to the existing institutions as well.

19. The learned senior counsels, by referring to the provisions of Clause X(2) of the Notification, dated 07.11.2023, have contended that for pharmacy courses, the power has been delegated to the Srimanta Sankaradeva University of Health Sciences and the respective Councils. They have also submitted that in the scheme of the Pharmacy Act, 1948; the power of the State Government to regulate the pharmacy education as well as the process of registration of qualified Pharmacists is not found. The learned senior counsels have accordingly submitted that the action on the part of the State respondents in issuing the Notification, dated 07.11.2023, and Notification, dated 28.02.2024, issued by the Srimanta Sankaradeva University of Health Sciences, has to be held to have been so issued without any jurisdiction being vested on the said authorities.

20. The learned senior counsels have further submitted that the students who have pursued Diploma courses from institutions not affiliated to the Srimanta Sankaradeva University of Health Sciences would now be required to take two Exit Examinations for qualifying themselves for registration with the State Council and the same reflects an apparent discrimination meted out to the students who have qualified from institutions otherwise not affiliated to the said Srimanta Sankaradeva University of Health Sciences. It is further submitted that

the students passing out from institutions affiliated to the Srimanta Sankaradeva University of Health Sciences have been exempted from undertaking the said Exit Examination as contemplated under the Notification, dated 07.11.2023, without there being any reason assigned for making such classification.

21. The learned senior counsels have also submitted that while reasonable classification is permissible under the provisions of Article 14 of the Constitution of India but the same is contended to be clearly absent in the present matter. Accordingly, it is submitted that the Notifications insofar as it relates to the students passing out from institutions not affiliated to the Srimanta Sankaradeva University of Health Sciences has also to be struck down on the ground of it being in violation of the provisions of Article 14 of the Constitution of India.

22. Dr. Saraf, learned senior counsel, in support of his submissions, has relied on the following decisions of the Hon'ble Supreme Court in the cases of: **(i). E. P. Royappa v. State of T.N. & ors.**, reported in **(1974) 4 SCC 3**; **(ii). In re. The Special Courts Bill 1978**, reported in **(1979) 1 SCC 380**; and **(iii). D. S. Nakara v. Union of India** reported in **(1983) 1 SCC 305**; as well as on the decision of this Court in the case of **Makum Tea Co.(India) Ltd. v. State of Assam & ors.**, reported in **1997 1 GLR 138**.

23. Basing on the above premises, the learned senior counsels have submitted that the Notification, dated 07.11.2023, issued by the Government of Assam in the Medical Education and Research Department; and Notification, dated 28.02.2024, issued by the Respondent No. 4 University, are required to be

stayed by this Court.

24. Mr. N. Deka, learned counsel for the petitioners appearing in WP(c)1751/2024, has made the lead submissions on behalf of the students who have completed their Diploma in Pharmacy course during the academic session 2021-23 and passed the examination in July, 2023. The learned counsel at the outset submits that he adopts the arguments advanced by the learned senior counsels in the matter.

25. Mr. Deka, learned counsel, has further submitted that it is the Pharmacy Council of India which is empowered to lay down any provision with regard to registration of pharmacists and no other authority has been so empowered to lay down any stipulation in this connection under the provisions of the Pharmacy Act, 1948. Mr. Deka has also submitted that the Pharmacy Council of India in exercise of power conferred under Sections 10 and 18 of the Pharmacy Act, 1948, with the approval of the Central Government had framed the "Diploma in Pharmacy Exit Examination Regulation, 2022" and in terms thereof; would be holding the said Exit Examination for holders of Diploma in Pharmacy and it is only those candidates after completing an approved course of Diploma in Pharmacy and having qualified in the diploma in pharmacy Exit Examination, who will now be eligible to be registered as pharmacists under the provisions of the Pharmacy Act, 1948.

26. Mr. Deka, learned counsel for the petitioners, has further submitted that in terms of the said Regulation of 2022, the Pharmacy Council of India has issued

a circular, dated 22.12.2023, wherein, it has been stipulated that the Council would be conducting the Exit Examination during the period from July-September, 2024, for candidates who have completed their respective Diploma in Pharmacy course during the academic session 2023-24. The said circular further provides that the respective State councils shall not register the candidates who were admitted into Diploma in Pharmacy courses during the academic session 2022-23 and have passed out in the academic session 2023-24 until they qualify the Exit Examination and fulfill the other prescribed conditions under Section 32(2) of the Pharmacy Act, 1948.

27. Mr. Deka, learned counsel, in the light of the prescriptions as made in the Regulations of 2022, which is said to be prospective in nature as well as the Circular, dated 22.12.2023, submits that the Exit Examination as contemplated by the Pharmacy Council of India is applicable only to the candidates who have completed and passed out their respective Diploma in Pharmacy courses during the academic session 2023-24. Accordingly, it is submitted that the candidates who have completed their respective Diploma in Pharmacy courses during the academic session 2021-23, would not be covered by the provisions of the Regulations of 2022 as well as the Circular, dated 22.12.2023, and accordingly, subject to the other requisite eligibility criteria mandated to be possessed by them under the said Act; the Assam Pharmacy Council cannot deny to them, their respective registrations as pharmacists.

28. Mr. Deka, learned counsel, has submitted that on account of the stipulations as made in the Notification, dated 07.11.2023, as well as the

Notification, dated 28.02.2024, the petitioners in WP(c)1751/2024 and other similarly situated candidates, are being denied their registration as Pharmacists by the Assam Pharmacy Council. Such a step taken by the Assam Pharmacy Council is contended by the learned counsel for the petitioners, to be in clear violation of the provisions of the Pharmacy Act, 1948.

29. Mr. B. Gogoi, learned standing counsel, Health and Family Welfare Department, and Srimanta Sankaradeva University of Health Sciences, has submitted that the Notification, dated 07.11.2023, has been so issued so as to ensure that the courses of study in nursing/pharmacy/allied Health Sciences in the State of Assam are carried-out by the concerned institutions in the manner as required by the bodies regulating such courses. It was further contended to have an uniformity in the administration of the Health Science courses in the state of Assam, it was required that all such institutions imparting education in nursing/ pharmacy/allied health sciences in the State of Assam, shall obtain affiliation from the Srimanta Sankaradeva University of Health Sciences. Such a course of action was necessitated to ensure that the students clearing the courses involved, have cleared the courses by undergoing study of a uniform standard.

30. Mr. B. Gogoi, learned standing counsel, Health and Family Welfare Department, has further submitted that the Exit Examination has been formulated in the manner it is so formulated in clause XI of the Notification, dated 07.11.2023, so as to ensure that the students from institutions not affiliated to the Respondent No. 4 University, have pursued a course of study in Pharmacy in the manner as is required under the provisions of the Pharmacy

Act, 1948, and the rules and regulations framed thereunder by the Pharmacy Council of India. It is further contended that such a course of action would ensure that the Pharmacists now being registered in compliance with the provisions of the Notification, dated 07.11.2023, would be thoroughly qualified in their profession and would benefit the public at large.

31. Mr. B. Gogoi, learned standing counsel, Health and Family Welfare Department, has also submitted that the Notification, dated 28.02.2024, has been issued strictly in terms of the prescription as made in the said Notification, dated 07.11.2023, and the power being so delegated to the Respondent No. 4 University to conduct the courses of the Exit Examination, in question; the Respondent No. 4 University is competent to hold the said Exit Examination.

32. Mr. B. Gogoi, learned standing counsel, Health & Family Welfare Department, has submitted that the respondents herein would file a detailed affidavit highlighting the source of power for issuance of the Notification, dated 07.11.2023, by the State Government as well as the source of power for allowing the Srimanta Sankaradeva University of Health Sciences to conduct the Exit Examination for Diploma in Pharmacy and Bachelor Degree holders in Pharmacy.

33. I have heard the learned counsels appearing for the parties in the matter and also perused the materials made available on record.

34. This Court vide the present order, is only examining the prayer made by

the petitioners in their respective writ petitions for an interim direction.

35. As contended by the learned counsels appearing for the petitioners in the matter; the Pharmacy Act, 1948, was so enacted to make better provisions for the regulation of the profession and the practice of pharmacy and for that purpose, to constitute the pharmacy councils.

36. A perusal of the said Pharmacy Act, 1948, would reveal that it covers all areas inclusive of approval of courses, laying down of course contents, prescribing eligibility conditions for students as well as teachers, evaluation of standards of examination, grant of registration by the respective State Councils, taking action for any infamous conduct, etc.. Section 10 of the Pharmacy Act, 1948, empowers the Pharmacy Council of India to frame Education Regulations prescribing the minimum standard of education required for qualifying as a pharmacist. As per sub-section(2) of Section 10, such Education Regulations may prescribe the nature and period of study and of practical training to be undertaken before admission to an examination; facilities to be provided for students undergoing approved courses of study; the subjects of examination and the standards therein to be attained; and any other conditions of admission to examinations.

37. Section 12 of the Pharmacy Act, 1948, mandates that any "authority" in a State that is empowered to conduct a course of study in pharmacy, may apply to the Central Council for approval of the course in accordance with the Education Regulations. Likewise, any authority which conducts an examination

in a State for pharmacy should apply to the Pharmacy Council of India for approval of such examination. It is only a student who has passed/completed an approved course of study and passed an approved examination, can only be registered as a Pharmacist subject to meeting other requirements. Section 29 deals with the preparation and maintenance of a register of pharmacists. Section 42 of the Pharmacy Act, 1948, further mandates that a person shall not practice the profession of pharmacy unless he or she is registered as a pharmacist in accordance with the said Pharmacy Act, 1948.

38. As contended in the Bar, in exercise of powers vested in the Pharmacy Act, 1948; the Pharmacy Council of India has framed a number of Regulations for prescribing minimum standards of education as well as regulating the subject of Pharmacy in India. It is under such powers as vested with the Pharmacy Council of India that the "Diploma in Pharmacy Exit Examination Regulation, 2022", was so framed.

39. On considering the various provisions of the Pharmacy Act, 1948 and the Regulations made thereunder; it is prima facie found that the Pharmacy Act, 1948, is a complete Code in itself in the subject of Pharmacy. It is also revealed that the Pharmacy Council of India has been constituted as a body empowered to regulate not only the education in Pharmacy but also the profession of pharmacy.

40. The Pharmacy Act, 1948, exclusively covers all areas which would be requisite for regulating both the conduct of courses pharmacy as well as the

maintenance of the standards of practice in the pharmacy. Accordingly, it is the prima facie view of this Court that the enactment of the Pharmacy Act, 1948, was to ensure that there is seamless regulation of the profession of pharmacy.

41. Section 32(2) of the Pharmacy Act, 1948 mandates that after the Education Regulations have taken effect in a State, a person shall on payment of the prescribed fee, be entitled to have his name entered on the register if he has attained the age of 18 years, if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved under section 14 of the said Pharmacy Act, 1948.

42. Section 18 mandates that regulations to carry-out the purpose of Chapter 2 of the Pharmacy Act, 1948, can be framed by the Central council which regulations in terms of the provisions of Section 18(4) are required to be laid as soon as it is made before each House of the Parliament while it is in session in the manner as provided therein for the approval of the same.

43. Accordingly, for matters covered under Chapter II which in addition to covering the regulation of education in pharmacy, also deals with the registration of pharmacists in the central register which step is taken after registration of a person by the State Council.

44. A glance of the provisions as placed under Chapter II of the Pharmacy Act, 1948, would reveal that the power pertaining to the courses in the State as well

as the inclusion in the central register is vested only with the Pharmacy Council of India.

45. Chapter IV of the Pharmacy Act, 1948, pertains to the registration of pharmacists by the Council as constituted for each State or more than one States. Section 32(2) while providing for the manner for registration further requires that a person to be eligible for being registered by the State Council, has to pass an approved examination or possess a qualification approved under Section 14 of the Pharmacy Act, 1948.

46. The respective State Governments are empowered under Section 46 of the Pharmacy Act, 1948, to make rules, to carry out the purpose of Chapter III, IV and V of the said Act including the conditions for registration under sub-section 1 of Section 32.

47. It is to be noted that in the present proceedings, it is the provisions of Section 32(2) that would have an application in-as-much as in the State; the education regulations have already come into force.

48. Having noticed the various provisions of the Pharmacy Act, 1948; this Court would now examine the Notification, dated 07.11.2023.

49. A perusal of the Notification, dated 07.11.2023, reveals that the same was so issued to bring into effect a regulatory framework for the nursing/pharmacy/allied health science sectors in the State of Assam. The said

Notification, dated 07.11.2023, professes that the same was issued with a view to develop the nursing/pharmacy/allied health science sectors in the State of Assam and to bring them upto all India standard with a view to produce best quality graduates/diploma holders in nursing/pharmacy/allied health science sectors in the State.

50. Accordingly, it was stated that the Government have framed detailed norms with regard to physical infrastructure, academics, teaching facilities, etc., for opening new nursing/ pharmacy, allied health Science courses in the State. Accordingly, the stipulations as made in the said Notification, dated 07.11.2023, was so adopted to bring the matter into fruition.

51. The said Notification, dated 07.11.2023, in clause I mandates that all institutions imparting education in nursing/pharmacy/allied health science sectors in the State, are required to obtain affiliation from Srimanta Sankaradeva University of Health Sciences and such affiliation as granted under other State Universities are to be migrated to the Srimanta Sankaradeva University of Health Sciences within 3 years from the date of issue of the Notification.

52. Insofar as it concerns the compulsory pre-registration internship for pharmacy courses, the said Notification, dated 07.11.2023, in clause X(2) mandates that same would be in terms of the guidelines of the Srimanta Sankaradeva University of Health Sciences and the respective Councils.

53. Clause XI of the Notification, dated 07.11.2023, contemplates holding of an Exit Examination for all candidates who have passed out from institutions not affiliated to the Srimanta Sankaradeva University of Health Sciences in the State including those from private institutions of the State as well as other eligible students who have passed out from institutions/universities outside the State. The said Exit Examination is required to be conducted by the Srimanta Sankaradeva University of Health Sciences and only those candidates who pass the Exit Examination, have been held to be eligible for registration with the respective State Councils which in the case of the pharmacy in the State is the Assam Pharmacy Council.

54. As noticed hereinabove under the provisions of the Pharmacy Act, 1948; the Pharmacy Council of India is solely empowered to prescribe the necessary conditionalities to be achieved with regard to the profession of pharmacy and no other authority has been so empowered.

55. The power of the State Government to frame Rules is traceable to the provisions of Section 46 of the Pharmacy Act, 1948, which mandates that the State Government may make rules to carry out the purposes of Chapter II, IV and V of the said Act. However, it has not been demonstrated that the State Government had in exercise of its powers under Section 46 of the Pharmacy Act, 1948, framed Rules to regulate the matters as envisaged under the said provision.

56. It is not clear as to how in the absence of a rule being framed under the

provisions of Section 46 of the Pharmacy Act, 1948; the State Government is empowered to regulate any aspect with regard to the profession and practice of pharmacy. This Court in the absence of a detailed affidavit from the State respondents in the matter is handicapped from arriving at definite conclusions on the said issue. An issue would arise in the present proceedings as to whether in the absence of any rule being framed by the State Government pertaining to matters covered by Chapter IV of the said Act; it would be empowered to issue notifications like the Notification, dated 07.11.2023, with the stipulations, more particularly, those pertaining to the profession and practice of pharmacy.

57. In view of the stands as taken in the matter by the parties to the proceedings as well as the manner in which the Notification, dated 07.11.2023, has been so issued by the State Government; a further issue would arise in the present proceedings as to whether the right of the private Universities to provide Pharmacy courses in their campus in terms of their fundamental right under Article 19(1)(g), can be curtailed by the Executive authority by issuing a Notification, dated 07.11.2023, or taking a policy decision in the matter in terms of Article 162 of the Constitution of India, merely, on the ground that the legislature of the State has the power under Section 46 of the Pharmacy Act, 1948, to legislate with regard to the subject on which the Notification, dated 07.11.2023, was so issued.

58. This Court had required Mr. B. Gogoi, learned counsel for the respondents, to address the Court on twin issues i.e. the source of power of the State Government emanating from the Pharmacy Act, 1948, to issue Notifications like the Notification, dated 07.11.2023, with the stipulations as

made therein as well as the stipulation that the Exit Examination contemplated therein would only be limited to persons who had passed from an institution either in the State or outside the State not affiliated to the Srimanta Sankaradeva University of Health Sciences.

59. Mr. B. Gogoi, has submitted that in the absence of a detailed instructions from the respondents in the matter on the said issues, he is handicapped from making any submissions in the matter.

60. In view of the said position and this Court on an examination of the relevant provisions of the Pharmacy Act, 1948; having drawn a prima facie satisfaction that the State Government is not empowered to regulate the profession of pharmacy in any manner; is constrained to hold that the Notification, dated 07.11.2023, prima facie appears to be contrary to the provisions of the Pharmacy Act, 1948, more particularly, when the same does not disclose that the approval of the Pharmacy Council of India was received for issuance of such a Notification.

61. The conclusion as reached by this Court with regard to the powers of the State Government to issue the Notification, dated 07.11.2023, insofar as it concerns the pharmacy sector, was so drawn basing on a prima facie satisfaction reached upon examining the provisions of the Pharmacy Act, 1948. However, such a conclusion being a prima facie one and reached only for the purpose of consideration of the interim directions; would require further detailed consideration upon the respondents bringing their stand on record in the

matters by way of filing their respective affidavits.

62. In view of the above, this Court is of the considered view that a case for passing interim directions has been made-out by the petitioners and accordingly, the following directions are hereby issued in the matter:

(i). The Notification, dated 07.11.2023, insofar as it relates to regulation of the education as well as the profession of Pharmacy including the stipulations made therein, in Clause XI, to hold an Exit Examination for candidates passing out from private Universities in the State and from institutions not affiliated to Srimanta Sankaradeva University of Health Sciences; shall remain stayed until further orders.

(ii). As a consequence to the direction as passed herein, in paragraph(i) above, the Notification, dated 28.02.2024, issued by the Srimanta Sankaradeva University of Health Sciences scheduling the Exit Examination as contemplated under Clause XI of the Notification, dated 07.11.2023, on 21.04.2024; shall also remain stayed until further orders.

(iii). The petitioners who have completed their courses in Bachelor Degree in Pharmacy(B.Pharm); shall be permitted to register themselves with the Assam Pharmacy Council as Pharmacists subject to the conditions as mandated in this connection in the provisions of the Pharmacy Act, 1948, including the scrutiny by the Assam Pharmacy Council of the courses undergone by such candidates, to ascertain as to whether the

courses so undergone by such candidates, are courses approved by the Pharmacy Council of India and were pursued from institutions which had the approval of the Pharmacy Council of India.

(iv). Insofar as the petitioners who had undergone their respective Diploma in Pharmacy courses and had enrolled themselves for such courses prior to the academic session 2022-23 and had also passed out prior to the academic session 2023-24; shall be granted a provisional registration by the Assam Pharmacy Council subject to the verification of their educational certificates to ascertain as to whether the courses so undergone by such candidates, are courses approved by the Pharmacy Council of India and were pursued from institutions which had the approval of the Pharmacy Council of India.

(v). The petitioners who are covered by the provisions of the "Diploma in Pharmacy Exit Examination Regulation, 2022" and the Circular issued by the Pharmacy Council of India on 22.12.2023, i.e. candidates who had admitted themselves for undergoing Diploma in Pharmacy courses during the academic session 2022-23 and passed out in the academic session 2023-24; shall not be permitted to get themselves registered as Pharmacists until they qualify the Exit Examination as contemplated under the said Regulation of 2022 and fulfill other prescribed conditions as stipulated under Section 32(2) of the Pharmacy Act, 1948.

63. It is further provided that the present order being so passed on the

question of the validity of the Notification, dated 07.11.2023, and the Notification issued by the Srimanta Sankaradeva University of Health Sciences, dated 28.02.2024, under challenge in the present proceedings; this order shall in no way be construed to have restrained the authorities concerned from conducting the Exit Examination in terms of the "Diploma in Pharmacy Exit Examination Regulation, 2022", *read with* the Circular, dated 22.12.2023. The pendency of these proceedings, shall, in no way bar the conduct of the said Exit Examination under the provisions of the Regulation of 2022.

64. It is to be noted that in the proceedings in WP(c)1661/2024 which in addition to the issues arising with regard to the conduct of the pharmacy courses by the Assam Royal Global University (petitioner, herein) also includes issues relating to conduct of courses in nursing; this Court having limited the examination in the present order to that in the field of pharmacy; the petitioner in the above-noted case, is at liberty to raise similar issues with regard to the other sectors like the nursing and/or allied health science sectors in the State of Assam by way of filing an appropriate application as and when cause of action for the same arises.

65. The decisions as relied upon by Dr. Saraf, learned senior counsel, are being not discussed in view of the conclusions reached hereinabove and the same shall be considered at the time of final consideration of the issues arising in the present proceedings.

66. As prayed for, list all these matters again on 15th of May, 2024.

67. The State respondents are required to bring on record their stand by way of filing their respective affidavits on or before 13th of May, 2024.

JUDGE

Comparing Assistant