



GAHC010087052023



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

Case No. : WP(C)/2196/2023

ASSAM REGISTERED PHARMACIST UNION AND ANR
REP. BY ITS GEN. SECY. DIGANTA CHOUDHURY, HAVING ITS REGD
OFFICE AT PANJABARI, GUWAHATI, KAMRUP ASSAM

2: SRI DIGANTA CHAKRABARTY
GS OF ARPU

S/O- DULAL CHAKRABARTY

R/O- PANJABARI
BAGHORBORI
GUWAHATI-37

3: IKBAL HUSSAIN
CHIEF ORGANISING SECY. OF ARPU

S/O- RAFIQL ISLAM

R/O- VILLAGE -
JARAMARI
BALISATRA
DHING
NAGAON-782122
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM, HEALTH AND
FAMILY WELFARE DEPARTMENT, DISPUR, GUWAHATI-06

2: THE DIRECTOR OF HEALTH SERVICES
HENGERABARI
GUWAHATI-36



3:THE ASSAM PHARMACY COUNCIL
REP. BY ITS PRESIDENT
PHARMACY BHAWAN
DIRECTOR OF HEALTH SERVICE CAMPUS
HENGERABARI
GUWAHATI-36
ASSAM

4:THE REGISTRAR
ASSAM PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENGERABARI
GUWAHATI-36

5:THE PRESIDENT CUM RETURNING OFFICER
ASSAM PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENGERABARI
GUWAHATI-36

6:SRI MUNINDRA CHANDRA DEKA
PRESIDENT CUM REGISTRAR
ASSAM
PHARMACY COUNCIL

DIRECTOR OF HEALTH SERVICE CAMPUS
HENGERABARI
GUWAHATI-36
ASSA


Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

26.04.2023

 Heard Shri U.K. Nair, learned Senior Counsel assisted by Shri H.K. Das, learned





counsel for the petitioners. Also heard Shri B. Gogoi, learned Standing Counsel, Health & Family Welfare Department.

Considering the subject matter of dispute and the instructions received by Shri Gogoi, the learned Standing Counsel pursuant to the order of this Court dated 25.04.2023, this writ petition is taken up for final disposal at the motion stage.

At the outset, Shri Gogoi, the learned Standing Counsel has clarified that the instructions have been received from the Assam Pharmacy Council, a copy of which is also placed before this Court.

The petitioner no. 1 is the Assam Registered Pharmacist Union and the two other petitioners are its office members. The grievance is with regard to a notification dated 10.02.2023 for holding the elections of 6 (six) members of the Assam Pharmacy Council which are scheduled to be held on 27th, 28th and 29th of April, 2023.

The challenge is made on two primary grounds, firstly, it is contended that there were 3000 (three thousand) nos. of fake / illegal Pharmacists of which, a process was initiated for detection and cancellation and in the meantime, 1810 such license was already cancelled. It is the case of the petitioners that though the remaining 1190 was also detected to be fake / illegal, no final orders of cancellation were issued and in that case, the elections that are scheduled would be vitiated and would be reduced to a nullity.

The second ground of challenge is that as per Rule 8 (2) of the Rules of 1959, elections for the Council are prescribed to be held in a particular mode by issuance of a voting paper in Form B. However, the instant elections are contemplated to be held on an online basis in which case apart from the lightly prejudice to be caused to the actual members, the same is wholly against the Rules.

The learned Senior Counsel, accordingly, submits that appropriate orders may be passed to redress the grievance of the petitioners.



Responding to the said submission, Shri Gogoi, the learned Standing Counsel of the Department has submitted that so far as the first ground of challenge is concerned, as per instructions received, the authorities have ensured that in the ensuing election process, the remaining 1190 candidates with fake / illegal license would not be allowed to vote. He, accordingly, submits that since the primary grievance of the petitioners have been substantially redressed, the elections may be allowed to be held. As regards the second ground of challenge, the learned Standing Counsel has submitted that the decision to go for an online election system is as per the SOP formulated and communicated vide letter dated 18.02.2023. He, further, submits that the Rules of 1959 would be amended appropriately to incorporate the provision for online voting system for subsequent election.

The learned Standing Counsel has also drawn the attention of this Court to Rule 24 which gives a liberty to the President in the matter of holding elections.

Heard and considered the rival submission made by the learned counsel for the parties.

As regards the first ground of challenge, since it is the stand of the respondents that the remaining 1190 fake / illegal Pharmacist will not be allowed to vote, the grievance relating to that aspect appears to have been redressed. However, so far as the mode of holding the elections is concerned, the present method to go for online voting appears not to be in consonance with Rule 8 (2) of the Rules of the 1959 which prescribes for a particular manner to hold the elections. For ready reference Rule 8 (2) is extracted herein below:

"8...

(1)...

(2) a voting paper in Form B annexed to these rules shall be issued to reach person whose name is borne on the Electoral Roll referred to in Rule 3, by



registered post, according to the address reported upto the date proceeding the first day of the period fixed in the notification under Rule 2 for receiving nomination papers. A cover addressed to the Returning Officer and an identification envelope with the particulars specified in Form C annexed to these rules printed on its back shall be sent along with every voting paper."

This Court is of the view that when there is a prescribed Rule, the same cannot be violated and the method has to be followed.

The part of the instructions that there is a contemplation to amend the Rules of 1959 would be relevant only for subsequent elections which can be held on an online system only after the amendment takes place and not before that.

In the celebrated case of **Nazir Ahmed Vs. King Emperor**, reported in **AIR 1936 253 PC (II)**, the law has been settled as follows.

"The rule which applies is a different and not less well recognized rule—namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

In view of the above, this Court is of the opinion that the writ petition deserves to be allowed by directing that while there will no bar for holding the elections in accordance with law by ensuing that the voters are constituted only of the genuine license holder, the mode has to be strictly in accordance with Rule 8 (2) of the Rule 1959 and the other statutory prescription. Since the Rule contemplates a particular method which has not been followed the elections may be deferred and be held expeditiously and preferably within a period of 45 days from today in accordance with the Rule.



Writ petition accordingly stands disposed of.

A copy of the written instructions dated 22.03.2022 is made part of the records.

Sd/- Sanjay Kumar Medhi
JUDGE

B

Comparing Assistant

27/4/2023

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Birethan Houser
Date..... 27/4/23
Administrative Officer (Judicial)
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Gauhati High Court
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