

D.K. Joshi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-20-2000

Reported in : 2001(1)AWC757

Judge : Binod Kumar Roy and ;A.K. Yog, JJ.

Acts : Drugs and Cosmetic Rules, 1945, Rules 49A, 50A, 59, 65 and 66; [Constitution of India](#) - Article 21 and 47; [Drugs and Cosmetics Act, 1940](#); [Prevention of Food Adulteration Act, 1954](#); [Pharmacy Act, 1948](#)

Appeal No. : C.M.W.P. No. 13620 of 1993

Appellant : D.K. Joshi

Respondent : State of U.P. and Others

Advocate for Def. : Sabhajeet Yadav and ;S.C.

Advocate for Pet/Ap. : U.N. Sharma and ;Suneet Kumar, Advs.

Judgement :

ORDER

Binod Kumar Roy and A. K. Yog, JJ.

1. The prayer of the petitioner is to command the respondents (i) to restrain the Chief Medical Officers of this State to act as Licencing and Controlling Authority,

who are not qualified under the Drugs and Cosmetic Rules, 1945, framed under the [Drugs and Cosmetics Act, 1940](#) (hereinafter referred to as the Rules and the Act respectively for the sake of brevity) ; (ii) to cancel the licences issued to such persons who are not qualified under the Rules after 12th April, 1989 ; and (iii) to award costs to him.

2. The petitioner claims to be a social worker and having interest in the welfare of the public at large specially for those of the district Agra who are being subjected to consumption of drugs distributed by such persons who are not authorised to distribute the same under the law ; he has no rivalry-direct or indirect-against the respondents nor is connected in any manner with them ; the Act contemplates to regulate the import, manufacture, distribution and sale of Drugs and Cosmetics and for maintenance of their high standard and its main object is to prevent import, etc. of the sub-standard drugs and intends to eradicate such drugs ; in the year 1945 the Rules were framed under the Act ; our State Legislature passed an Amendment Act No. 47 of 1975 amending the provisions of (i) the Indian Penal Code, (ii) the Code of Criminal Procedure, (iii) the Prevention of Food Adulteration Act and (iv) the Drugs and Cosmetics Act for providing deterrent punishment for offences relating thereto ; the State Government while exercising its power under sub-rule (1) of Rule 59 of the 1945 Rules vide notification No. 1022/XVI-X-XII(67)-76 dated March 24, 1977, was pleased to appoint all the Chief Medical Officers of the State in respect of whole of the district in which they were posted including Nagar Maha Palikas, Nagar Palikas, Notified Areas and Town Areas as Licencing Authority as per Part VI of the Rules, as also the Controlling Authority under Rule 50 of the Rules ; Vide Rule 49A the qualifications for the Licencing Authority were laid down to the effect that no person shall be qualified to be a Licencing Authority under the Act unless he is a graduate in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in clinical Pharmacology or Microbiology from a University established in India by law and has experience in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years provided that the requirements as to the academic qualification shall not apply to those Inspectors and Government Analysts, who were holding those positions on the 12th day of April, 1989 : vide Rule 50A the qualification of a Controlling Authority was prescribed laying down that no person shall be qualified

to be a Controlling Authority under the Act unless he is a graduate in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law and has experience in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years provided that the requirements as to the academic qualification shall not apply to those Inspectors and the Government Analysts who were holding those positions on the 12th day of April, 1989 ; Rules 49A and 50A aforementioned came into force with effect from 12th April, 1989 ; the aforesaid Rules have been accepted by our State as no amendment to the contrary has been made till date ; Part VI of the Rules lays down provisions for the sale of drugs other than homeopathic medicines, conditions for grant or renewal of the licences to sale, stock, exhibit or offer for sale, or distribute drugs other than those included in Schedule X which shall be made in Form 19 or Form 19A, as the case may be, or in the case of drugs included in Schedule X, shall be made in Form 19C to the Licencing Authority and shall be accompanied by a fee of rupees forty ; Rule 59 (1) states that the State Government shall appoint Licencing Authority for the purposes of Part VI for such areas as may be specified ; Rule 65 lays down the conditions of licence ; Rule 65 (2) states that the supply, otherwise than by way of wholesale dealing of any drugs supplied on the prescription of a Registered Medical Practitioner shall be effected only by or under the personal supervision of a qualified person ; thus, it is relevant that the supply of drugs by retail sale of the prescription of the Registered Medical Practitioner may be done under the personal supervision of the qualified person ; Rule 65 (15) (c) (ii) lays down that the 'qualified person' means a person who (a) holds a Diploma or Degree in Pharmacy or Pharmaceutical Chemistry of an Institute approved by the Licencing Authority, or (b) is a registered pharmacist, as defined in the [Pharmacy Act, 1948](#) ; it is thus evident from the scheme of the Drugs and Cosmetics Act and the Rules made thereunder that the stock and sale of the drugs shall be strictly under the supervision of a qualified person and further the licences for the retail sale and wholesale should be granted by Licencing Authority for whom the Rule specifically provides the qualifications with a view that a person having knowledge in Drugs and Cosmetics should be a person who is qualified under the Rules acting as a Licencing Authority ; in our State there are

such Licencing Authorities, who do not possess the minimum qualification as required under Rules 49A and 50A the names and place of postings of such persons are disclosed in paragraph 20 of this writ petition ; in district of Agra there were 167 registered pharmacists in the year 1984 and approximately 200 registered pharmacists are presently in the city and approximately 1,600 licences have been granted to the retailers and it is not understandable how such a few qualified persons take the licence to the extent of 10 times of the qualified persons ; similar is the position in the remaining 62 districts of the State ; the gravity of the situation became all the more alarming when the demographic to the population of the State is taken into account, as per the latest census almost 50% of the population of this State are living below the poverty line and are illiterate, the illiteracy being 30% which were highlighted by publication in various news papers viz. Amar Ujala dated 17.11.1992 and 19.12.1992, Jansatta dated 15.1.1993. Dainik Jagran dated 19.3.1993 and Aaj dated 20.3.1993, copies of which are Annexures- 1 to 5 ; in Writ Petition No. of 1990. Vijai Kumar v. Inspector of Drugs, Range Chatiya Azam Khan, Agra, filed in the year 1990, this Court vide its order dated 9.2.1990 held that the Rules are applicable to the Chief Medical Officers of this State, but directed the petitioner Vijai Kumar to file an appeal under Rule 66 before the State Government with a direction to decide it within a reasonable time, pursuant to which the State Government, vide its order dated 17.2.1990, as contained in Annexure-7, held that the Chief Medical Officer, Agra, does not possess the minimum qualification under Rule 49A and is, thus, not competent to act as Licencing Authority, which is also applicable to other Chief Medical Officers of the State ; under Article 47 it is the duty of the State Government to improve the health and healthy life of the public which means that the State Government cannot subject the public health of such a large number of persons and maintenance of health which having been guaranteed under Article 21 of the [Constitution of India](#) and in the facts and circumstances, it would be expedient in the interest of justice that the commands prayed for be issued.

3. The record discloses that before admission also, this case was adjourned time and again awaiting filing of counter-affidavit and ultimately taking into account the non-filing of any counter-affidavit, the Bench (comprising one of us, Binod Kumar Roy, J.) proceeded to admit this writ petition on 16.11.1998 giving liberty to the

standing counsel to file counter-affidavit, if any, by 5th January, 1999. No counter-affidavit has been filed till to date.

4. Sri U. N. Sharma, learned counsel appearing in support of the prayers made in this public interest writ petition, contended as follows :

'In view of the amendments made in the Rules, with effect from 12th April, 1989, only those persons can be appointed as Licencing Authority and Controlling Authority who are having requisite qualifications in terms of Rules 49A and 50A of the Rules and even though the Government took a decision in relation to Agra that the Chief Medical Officer, Agra, was lacking such qualifications, yet it has adopted a callous attitude in not appointing such Licencing and Controlling Authorities as required under the Rules rather had illegally proceeded to appoint the Chief Medical Officers of various districts enumerated in paragraph 20 of the writ petition to function as Licencing and Controlling Authorities apparently contrary to the Rules and, thus, it is a high time that the Government be appropriately directed to conform the standards prescribed, and abide by the Rules.'

In support of his submissions, he also referred to a common judgment of the Supreme Court dated September 19, 1988 in Dr. M. C. Bindal v. R. C. Singh and others, C.A. No. 3757 of 1984, Dr. R. C. Bindal v. U. P. Public Service Commission, Allahabad and another, W.P. No. 750 of 1986, Sadan Kumar Majumdar v. State of U. P. and others, C.A. No. 3926 of 1986 and State of Uttar Pradesh v. Ram Chander Singh and others, C.A. No. 3798 of 1984 and yet another judgment of the Supreme Court dated August 25, 1999 in Bhagwan Singh and another v. State of Punjab and others, C.A. No. 3369 of 1997.'

5. Sri Sabhajeet Yadav, learned standing counsel appearing on behalf of the respondents, on the other hand, contended as follows :

'This writ petition be thrown out on the ground that such Chief Medical Officers whose appointment as Licencing and Controlling Authorities is under challenge do not possess requisite qualifications laid down by the Rules have not been impleaded as party-respondents. While making this submission, Sri Yadav placed reliance on these decisions of the Supreme Court--(i) Prabodh Verma v. Dal

Chand and others, AIR 1985 SC 167, (ii) J. Joshe Dhanaplal v. S. Thomas, 1996 (3) SCC 587 and (iii) Ishwar Singh v. Kuldip Singh, 1995 Sup (1) SCC 179. He has informed that he has no instructions on behalf of the respondents except respondent No. 4 the Chief Medical Officer, Agra, and that he is taking this objection in regard to maintainability of this writ petition on his behalf only.

6. The main prayer of the petitioner is to command the respondents to restrain such Chief Medical Officers of this State who have been authorised to act as Licencing and Controlling Authority under the Act on the ground that they do not possess requisite qualifications laid down under the Rules so that the avowed constitutional mandate enshrined under Article 21 of the [Constitution of India](#) under which this State is bound to safeguard the health of the people of this State and the objects of Act be achieved and not to quash the appointments of those unqualified Chief Medical Officers. The facts stated by the writ-petitioner have not been countered by the respondents by filing any counter-affidavit. The Legislative intent, in the absence of any contrary amendment by our State, has to be followed in terms and spirit by all concerned. The two decisions of the Supreme Court relied upon by Sri Sharma do support his submissions. Therefore, such Chief Medical Officers who have now been conferred the authority to act as Licencing and Controlling Authorities under the Rules, who do not possess the requirements laid down by the Legislature, cannot be allowed to function as such. If this is allowed to continue, it is bound to endanger the health of the people besides breach of the avowed object for which the Legislature had proceeded to enact the Drugs and Cosmetics Act and the Rules framed under that Act. This constitutional Court, in that backdrop, could not become a silent spectator and thereby indirectly become a party to allow continuance of the breach of the sacred constitutional mandate enshrined under Article 21 of the [Constitution of India](#) and the avowed object of the Act and the Rules. We do not see any merit in the preliminary objection raised by Sri Yadav or legal impediment so as to restrain ourselves in not restraining the respondents from not abiding the Rules aforementioned. The three decisions relied upon by Sri Yadav do not apply to the facts and circumstances of the instant writ petition.

7. We presume that the Government must be having complete data to find out objectively as to which of those Chief Medical Officers are duly qualified under the Rules or not and, accordingly, over-ruling the preliminary objection as being of without any substance, command the respondents to restrain such Chief Medical Officers of this State, who do not possess the qualifications aforementioned to act as Licencing and Controlling Authority under the Rules, besides to cancel the licences issued after 12th April, 1989 to those persons who are not qualified under the Rules. Let a writ of mandamus issue accordingly.

8. As award for costs to the petitioner was not pressed by Sri U. N. Sharma, we do not grant it.

9. The office is directed to hand over a copy of this order to Sri Sabhajeet Yadav, learned standing counsel, by 23rd December, 2000, for its intimation to and follow up action at once by the State by the appropriate authority.

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