

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 654/2022**

Sri Nilimanka Das,

son of Nakul Das, resident of Jogendranagar, Bankumari,
P.O. Jogendranagar, P.S. East Agartala, District- West Tripura

..... Petitioner

Versus

- 1. The State of Tripura**, represented by the Secretary, Health and Family Welfare Department, Government of Tripura, Civil Secretariat, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura, Pin- 799010
- 2. The Secretary**, Health and Family Welfare Department, Government of Tripura, Civil Secretariat, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura, Pin- 799010
- 3. The Under Secretary**, Health and Family Welfare Department, Government of Tripura, Civil Secretariat, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura, Pin- 799010
- 4. The Director of Medical Education**, Government of Tripura, Bidurkarta Chowmuhani, P.O. Agartala-799001, West Tripura
- 5. The Principal**, Regional Institute of Pharmaceutical Science & Technology (for short RIPSAT), Government of Tripura, Abhoynagar, P.O. Abhoynagar, P.S. New Capital Complex, Kunjaban, Agartala, District- West Tripura, PIN-799005
- 6. Prof (Dr) Suvakanta Dash**, the Principal, Regional Institute of Pharmaceutical Science & Technology (for short RIPSAT), Government of Tripura, Abhoynagar, P.O. Abhoynagar-799005, P.S. New Capital Complex, Kunjaban, Agartala, District- West Tripura
- 7. Pharmacy Council of India**, to be represented by it's Registrar cum Secretary, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No. 2, Community Centre, Maa Ananda Mai Marg, Okhla, Phase-I, New Delhi- 110020

-----Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA Mr. A. Bhaumik, Advocate Mr. B. Majumder, Deputy SGI
Date of hearing and delivery of judgment & order	:	25.01.2023
Whether fit for reporting :		Yes

HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (ORAL)

25/01/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Additional GA appearing for the respondents-State and Mr. A. Bhaumik, learned counsel appearing for the private respondents and Mr. B. Majumder, learned Deputy SGI appearing for the respondents-Union.

2. By means of filing this writ petition, the petitioner has prayed for the following reliefs:

- “(i) Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of like nature shall not be issued whereby quashing & cancelling the Letter No. F.1(1)-Sub/Dr.Nilimanka Das/ADM/Vol-I/2020-21/756-60 dated 29.07.2022 issued by the Secretary, Health & Family Welfare Department, Govt. of Tripura;**
- (ii) Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of like nature shall not be issued whereby directing the Respondents to ensure that, the petitioner being an Executive Committee member of PCI, can take part in the meetings of the Executive Committee as well as Central Council as & when required being allowed by the State Respondents to attend those meetings;**
- (iii) Pass interim order, staying the operation of the impugned Letter No. F.1(1)-Sub/Dr.Nilimanka Das/ADM/Vol-I/2020-21/756-60 dated 29.07.2022 issued by the Secretary, Health & Family Welfare Department, Govt. of Tripura, by restraining the Respondents not to act upon the impugned letter dated 29.07.2022, till the disposal of instant writ petition;**
- (iv) Make the rule absolute;**
- (v) Pass any other Order/Orders/Directions as may be considered fit and proper by the Hon'ble High Court”.**

3. Briefly stated, the petitioner is a nominated member appointed under Section 3(h) of the Pharmacy Act, 1948. He has been nominated as the State Member of Pharmacy Council of India (for short, "PCI") vide notification dated 29.11.2018 issued by the respondent no. 2. During his secured tenure, vide impugned order dated 29.07.2022 issued by the respondent no. 2, Prof. (Dr.) Suvakanta Dash, respondent no. 6 herein, has been officially nominated as member in the Pharmacy Council of India under Section 3(h) of the Act, 1948 replacing the petitioner. Challenging the impugned order dated 29.07.2022, the petitioner submitted representation before the respondents on 01.08.2022, but, till date the respondent no.2 failed to address the said representation. Hence, this writ petition.

4. Mr. M. Debbarma, learned Additional GA submits that there is no provision under Section 7 of the Pharmacy Act, 1948 (here-in-after referred to as the Act, 1948) restricting the State government from cancelling the appointment of the nominated member of PCI before expiry of tenure of five years.

5. Echoing to the submission of learned Additional GA, Mr. A. Bhaumik, learned counsel appearing on behalf of respondent no. 6 submits that there are some allegations against the petitioner, and for that reason, the State government had cancelled the nomination of the petitioner.

6. I have considered the submissions advanced by learned counsel appearing for the parties. Let me first deal with the submission of Mr. Bhaumik, learned counsel for the respondent no. 6.

The State-respondents in their counter affidavit nowhere have alleged that the petitioner had misused or abused his position as State Member at PCI. The only ground taken by the State government is that the said Act, 1948 does not restrict it from cancelling the appointment/ nomination of its nominated Member to PCI before expiry of term of five years. The State-

respondents have filed counter affidavit. At para 6 of the counter affidavit, the State-respondents have stated thus:-

“6. That, it is humbly submitted that as per section 7(1) of the Pharmacy Act, 1948, a nominated member u/s 3(h) of the said Act shall hold office for a term of 5 years from the date of his nomination or until his successor has been duly nominated whichever is longer.”

In view of this, I do not find any merit in the submission of Mr. Bhaumik, learned counsel for the respondent no. 6.

7. Now, to deal with the submission of learned Additional GA, as recorded here-in-above, I have perused Section 7 of the Pharmacy Act, 1948, which are reproduced here-in-below, in extenso, for convenience:

“7. Term of office and casual vacancies.—(1) Subject to the provisions of this section, a nominated or elected member shall hold office for a term of five years from the date of his nomination or election or until his successor has been duly nominated or elected, whichever is longer.

(2) A nominated or elected member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) A nominated or elected member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive meetings of the Central Council or if he is elected under clause (a), (c) or (g) of section 3, if he ceases to be a member of the teaching staff, Medical Council of India or a registered pharmacist, as the case may be.

(4) A casual vacancy in the Central Council shall be filled by fresh nomination or election, as the case may be, and the person nominated or elected to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated or elected.

(5) No act done by the Central Council shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Central Council.

(6) Members of the Central Council shall be eligible for re- nomination or re-election.”

8. On conjoint reading of Sub-Sections (1), (2), (3), (4) of Section 7 of the said Act, 1948, it manifests that term of nominated member shall not be less than 5(five) years and it may be extended beyond the period of 5(five) years till new member is nominated or elected. Casual vacancy will arise if the nominated member resigns and his seat becomes vacant. Casual vacancy

shall also arise if such nominated member is found absent from three consecutive meetings of the Central Council without any excuse. The words, 'sufficient in the opinion of the Council' mean and connote that if such member gives any excuse or assigns any reasons for such absence, the Central Council shall decide the merits of such excuse and if the Council finds no merit and rejects the same, then, the seat of such member shall be deemed to have vacated. Again, the seat of the nominated member shall be deemed to have vacated if he is elected under clause (a), (c) or (g) of Section 3 of the Act, 1948.

9. In view of the above discussion, it cannot be said that State government has the absolute authority to cancel the nomination once one member is nominated as State Member to PCI due to the contingencies ingrained under Section 7 of the said Act, 1948. It is, thus, held that the power of cancellation of nominated member to PCI is to be exercised keeping in mind the limitations and the contingencies encrypted under sub-sections (2), (3) and (4) of Section 7 of the said Act, 1948. In furtherance thereof, if there is any allegation against a nominated member prompting the State government to cancel/withdraw his nomination, in that case, such nominated member has the right to get the opportunity of being heard, which is totally absent in the instant case.

10. Accordingly, the impugned order dated 29.07.2022 cancelling the nomination of the petitioner as nominated member to PCI (Annixure-6 to the writ petition) issued by the Secretary, Health & Family Welfare Department, Government of Tripura stands set aside. Consequently, the appointment of respondent no. 6 as nominated member to represent the State Member to PCI also stands quashed and the nomination/appointment of the petitioner as State Member to PCI is henceforth restored.

11. With the aforesaid observations and directions, the instant writ petition stands allowed and thus disposed of.

Pending application(s), if any, also stands disposed.

JUDGE

Saikat