

(2011) 10 MP CK 0064

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3582 of 2011

Dr. M.B. Sharma Nursing College

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Citation : (2011) 10 MP CK 0064

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

1. The petitioner has sought following reliefs:

(I) To issue a writ in the nature of certiorari order impugned dated 14.1.2011 (Annexure P/11) may kindly be quashed.

(II) To issue a writ in the nature of mandamus respondents may kindly be directed to permit the petitioner's College to run the B.Sc. Nursing Course.

2. The learned counsel for the petitioner submitted that the controversy involved in this petition is squarely covered by an order of the Division Bench of this Court in W.P. No. 14544/2011 Nandvandan College of Nursing vs. State of M.P. And others dated 22.9.2011.

3. The factual position is not disputed by Shri Naman Nagrath.

4. In Nandvandan College of Nursing, the Division Bench of this Court passed an order on 22nd September, 2011 which reads thus:

22.09.2011

On 20.09.2011, following order was passed :

On 05.09.2011 an order was passed, which reads as follows :

In presence of the learned counsel for the State the learned counsel for the petitioner has relied upon two decisions of the Supreme Court reported in

Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, and Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another,

The above decisions are cited for the proposition that if a Central Act is covered by Entries 64 or 65 or 66 of List I of the 7th Schedule, then any provision of the Act of the State Legislature under Entry 25, List III of the 7th Schedule, if in conflict with the Central Act, must give way. Relying upon this it has been argued that once Nursing Council under the Central Act has given recognition or clearance, University cannot insist for an NOC from the Commissioner, Higher Education of the State Government as pre-condition for considering affiliation of the Nursing College, which imparts education in B.Sc. (Nursing) which is a University level course.

List day after tomorrow to enable the learned State counsel to prepare the case and then argue.

Today learned Counsel for the University wants adjournment for obtaining instructions. There appears to be no good reason for the said request. It is a pure question of law, as summarized previously in the above quoted order. Both, the State Counsel and University Counsel, should have been ready on this aspect. However, in order to enable them to examine the matter, once again and for the last time, a short adjournment is being granted.

List day after tomorrow.

Office will trace out I.A. No. 11672/2011, which is said to have been filed today by the petitioner, and will connect it to the record of this case.

Today, we have heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel for the University.

It has not been shown to us how the Supreme Court decisions quoted above in the order dated 20.09.2011 do not apply here.

It is not disputed that the Central Act known as Indian Nursing Council Act, 1947 is covered by the said Entries of List-I of the 7th Schedule and, therefore, it is clear that any provision of any Act of the State Legislature under Entry 25, List-III of the 7th Schedule must give way.

The Madhya Pradesh Upcharika, Prasavika, Sahai Upcharika Prasavika Tatha Swasthya Paridarshak Registrikaran Adhiniyam, 1972 is enacted by the Madhya Pradesh Legislature. According to the University and the State, the NOC is actually requires from the Nurses Registration Council created under the 1972 Act aforesaid, and not from the State Govt.

This line of defense does not make any difference to the issue pointed out by the above quoted order dated 20.09.2011 because once the education of graduation level in the subject of Nursing is covered by the Indian Nursing Council Act, 1947

under the central list of the 7th Schedule of the Constitution of India, no State Act can be made so as to create a dual control over that education.

In the circumstances, we hold that the University cannot insist for a NOC either from the State Government or from the Nurses Registration Council for considering the affiliation of the petitioner college for the course of B.Sc. (Nursing) after such course has been given recognition or clearance under the Indian Nursing Council Act, 1947.

In the circumstances, the University will consider the affiliation for the year 2010-2011, and also for such subsequent years for which the recognition under the Indian Nursing Council Act 1947 subsists, without insisting for any such NOC either from the State Government or from the Nurses Registration Council. The decision will be taken by the University within 3 months.

Till such decision is taken by the University, the examination forms of the students for second year of B.Sc. (Nursing) for the year 2010-2011 will be provisionally accepted by the University and such students will be allowed to appear in the said examination. Their result will abide the decision of the University contemplated by this order,

The writ petition is accordingly disposed of.

5. As submitted by the parties that the controversy involved in this petition is squarely covered by the aforesaid order, this petition is accordingly disposed of in terms of order passed by the Division Bench in Nandvandan College of Nursing.

6. No order as to costs.