

(2024) 05 OHC CK 0114

In the Orissa High Court

Case No : Writ Petition (C) No. 39868 of 2023 & Batch

GKF Nursing Institute

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226

Indian Nursing Council Act, 1947 — Section 16(1), 16(1)(g), 16(1)(h), 16(1)(i)

Citation : (2024) 05 OHC CK 0114

Hon'ble Judges : Chakradhari Sharan Singh, CJ; Murahari Sri Raman, J

Bench : Single Bench

Advocate : Pami Rath, Soumendra Pattanaik, G.R. Sethi, A.K. Pandey, R.N. Mishra, R.C. Mohanty, P.K. Parhi, D.R. Bhokta

Judgement

Chakradhari Sharan Singh, CJ.

1. Since all these writ petitions filed under Article 226 of the Constitution of India involve common issues and the grievances of the petitioners are almost identical, they have been heard together and are being disposed of by the present common judgment and order.

2. The petitioners are the nursing institutions, governed by Indian Nursing Council Act, 1947 (hereinafter referred to as 'the Act'). In exercise of the powers conferred by sub-section (1) of Section 16 of the Act, the Indian Nursing Council (INC) has framed Indian Nursing Council (Revised Regulations and Curriculum for B.Sc. (Nursing) Program), Regulations, 2020 with effect from 05.07.2021.

3. These institutions were granted no objection certificate (NOC) for opening of new ANM, GNM, B.Sc.(N), P.B.B.Sc.(N) and M.Sc.(N) nursing course for the academic session 2023-24 in September 2023 by the Odisha Nurses and Midwives Registration Council (ONMRC). Later, provisional recognitions were granted in their favour in the month of October, 2023. It is the case of the petitioners that they were granted affiliation in November 2023 by the University.

4. It is noteworthy that by virtue of Section 16(1)(g) of the Act, the INC is vested with the power to prescribe the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers of nurses, midwives and health visitors, and for training in nursing administration by making Regulation. Section 16(1)(h) confers power on the INC to prescribe the conditions for admission to courses of training and Section 16(1)(i) to prescribe the standards of examination and other requirements to be satisfied to secure for qualifications recognition under this Act by way of regulation.

5. The INC has provided in its regulations that the start of semester for a course shall be 1st August every year. It further provides that no admission after the cut-off date, i.e. 30th September will be undertaken. Further, hall tickets/ admit cards, etc. shall not be issued to the candidates who are admitted after 30th September. The INC came out with a notification on 06.04.2023 reiterating the requirement that the commencement of session of B.Sc. (Nursing) Program shall be 1st August and last date of admission shall be 30th September every year. Further, admission to B.Sc. (N) during the academic year 2023-24 shall be through Common Entrance Examination by the State Government Common Entrance Cell/Universities. The notification further prescribed that such entrance test must be conducted before 15.06.2023. In the light of the said notification issued by the INC, the Directorate of Medical Education & Training (DMET), Odisha issued a notice on 23.05.2023 to the effect that admission to Basic B.Sc. Nursing course during the academic session 2023-24 shall be through Common Entrance Examination (CEE) conducted by the State Government Common Entrance Cell/University instead of NEET (UG). It also prescribed that such admission would be allowed through an entrance examination conducted by the State Nursing Selection Committee (SNSC), Odisha for the academic session 2023-24.

6. Further, the INC issued another notification dated 08.06.2023, in continuation with the earlier notification dated 06.04.2023 to the effect that students of B.Sc. (N) shall be admitted only if they qualify in the entrance examination conducted by the State Government/University/State Common Entrance Cell. The notification further stipulates that in case the admissions are resorted to with the concerned students not passing or appearing in the combined admission test conducted for the purpose of admission to B.Sc. (N) course nor following the guidelines for admission prescribed by the INC, the said students will be liable to face problems in reciprocal registration.

7. A subsequent notification No.17 dated 31.10.2023 issued by the INC has been brought to our notice extending the last date for all Nursing Programs for the academic year 2023-24, whereby last date for admission was extended till 30.11.2023. The said notification is crucial and is accordingly reproduced herein below: -

F No. 1-6/LT/2023-INC

Dated 31 Oct 2023

NOTIFICATION No.17 of 2023

Sub: Extension of Last date of Admission for the all Nursing Programs for Academic year 2023-24-reg.

In continuation to earlier notification no.13 of 2023 dated 22.09.2023, Indian Nursing Council has considered the request from the States with respect to extension of last date of admission for all nursing programs i.e., ANM, GNM, B.Sc. (N), PBB. Sc. (N), M. Sc. (N), Post Basic Diploma and NPCC for the Academic Year 2023-24 till 30th November 2023.

The total number of students admitted upto 31st Oct 2023 (regular batch) and 30th Nov 2023 (irregular batch) should add up to the sanctioned strength and shall not exceed the Annual intake.

NOTE:

It shall be ensured that the INC guidelines with respect to completion of syllabus in various nursing programmes be strictly followed.

(i) For B.Sc. (N)- The Universities/Colleges of Nursing shall implement the B.Sc. (N) semester wise. In this context, it is clarified that the students who are admitted upto 31st Oct 2023 shall be considered as REGULAR BATCH. The students admitted from 1st Nov 2023 onwards will be considered as IRREGULAR BATCH. Examination shall be conducted separately for the above batches. Universities shall ensure that institution shall comply with semester requirements as prescribed in the syllabi before the conduct of examination:

(a) A candidate must have minimum of 80% attendance (irrespective of the kind of absence) in theory and practical in each course/ subject for appearing for examination.

(b) A candidate must have 100% attendance in each of the practical areas before award of degree.

(ii) For GNM-a candidate must have minimum of 80% attendance (irrespective of the kind of absence) in theory and practical in each subject for appearing for examination. The diploma shall not be awarded to the student till she/he has completed the clinical/filed requirement.

(iii) For ANM-at least 80% of all the clinical requirement should be completed before appearing for the final (second year) examination and should have acquired the requisite competencies as listed in the syllabus before the award of the certificate/diploma by the State Nursing Council/Examination Board.

No request for further extension shall be considered. This issues with approval from the competent Authority.

8. It is worthwhile mentioning that the DMET, Odisha came out with a notice

dated 30.06.2023 inviting applications from eligible candidates for admission to ANM, GNM, Basic B.Sc., P.B. B.Sc., M.Sc. and P.B. Diploma Nursing courses in all ONMRC recognized Government and Private Nursing Institutions of the State for the academic session 2023-24. The admission calendar and the prospectus were also issued in relation to the admission to different nursing courses in such institutions.

9. It is an admitted fact that the institutions/bodies which have filed the present writ petitions did not have the ONMRC recognition as on the date of issuance of the said notice dated 30.06.2023.

10. In the present batch of writ petitions, the petitioners have put to challenge a notice dated 19.06.2023 issued by the DMET, Odisha wherein it has been prescribed that students of basic B.Sc. nursing course shall be admitted only if they qualify in the entrance examination conducted by the State Nursing Selection Committee, Odisha. It is their case that they were initially granted provisional recognition for nursing courses after the entrance examinations were held and last date for admission prescribed by the INC had already expired. It is also their case that since the recognition to these institutions was granted for the academic session 2023-24 after the cut-off date for admission, the opposite parties should allow them to fill-up the vacant seats by taking admission of the eligible candidates who fulfill the eligibility criteria as mentioned in the Clause-D of the prospectus, irrespective of the fact whether they had appeared in the CEE or not. They have also sought for a direction to the opposite parties to relax the qualifying percentile, i.e. 50 in the CEE as directed by the INC to zero.

11. In W.P.(C) No.39868 of 2023, a counter affidavit has been filed on behalf of the opposite parties no.2, 3 and 4. It is not in dispute that in accordance with the notice dated 30.06.2023 regarding admission to various courses including basic B.Sc. (N), an entrance test was held, whereafter the result came to be published on 15.09.2023. The merit list was prepared on 25.09.2023 and after scrutiny the final merit list was published on 03.10.2023. It has further been stated that after publication of result of entrance examination, choice locking of seats of Government institutions as well as private institutions was done. For the said purpose, the list of Basic B.Sc. Nursing institutions which had obtained the university affiliation was displayed and a revised tentative calendar for online counseling and admission to different nursing courses were also published. The office of the Convener, SNSC, Odisha issued a tentative admission calendar for online counseling and admission to various nursing courses. After completion of government counseling, the State Nursing Selection Committee issued a letter on 30.01.2024 intimating therein that the remaining vacant seats of government quota and in private quota of private ONMRC recognized institutions stood converted to management quota against which admission could be made at institutional level on or before 31.01.2024, in accordance with the prescribed guidelines. The institutions were also advised therein for online uploading process of admitted student's details in the management quota, to be completed

between 01.02.2024 to 29.02.2024.

12. Ms. Pami Rath, learned Senior Counsel appearing in some of the cases including the lead case, i.e. W.P.(C) No.39868 of 2023, has argued that as per the prospectus issued by the DMET, admission of students against 85% seats of the private institutions were to be given from central counseling. Further, in case any seat remained unfilled after completion of central counseling, those seats were required to be surrendered to the institutions. Such surrendered vacant seats, as well as the management seats, as per the prospectus, could be filled up by the recognized private nursing institutions at their own level by following the eligibility criteria fixed by the State Government. She has argued that the eligibility criteria of a candidate is that the candidate must have passed in the subject of Physics, Chemistry, Biology (PCB) and English and must have obtained minimum 45% marks taken together in PCB at the qualifying examination, i.e. 10+2. She further contends that the conditions as applicable to the seats actually filled by the Government have been made applicable to the surrendered seats and management seats. She accordingly contends that such privately managed institutions which have been recognized by the DMET, cannot be compelled to give admission to only such students, who had appeared in the CEE. It is her contention that such privately managed institutions should have the liberty to admit students against 15% management seats and the seats surrendered to the management which remained unfilled after the Central Counseling, based solely on the eligibility criteria as prescribed in the prospectus.

13. Mr. R.N. Mishra, learned Additional Government Advocate (AGA) appearing on behalf of the State and Mr. R.C. Mohanty, learned counsel for the DMET have submitted that the process adopted by the DMET is in accordance with the requirements laid down by the INC and as per the time schedule. He has argued that the private institutions cannot be allowed to give admission to the candidates who had not participated in the entrance examination, that too after the cut-off date fixed for the said purpose in view of the specific guidelines issued by the INC in this regard.

14. They have drawn our attention to a notification dated 22.10.2019 issued by Letter No.26601 by the Government of Odisha in the Health and Family Welfare Department which lays down the general guidelines for issuance of NOC and recognition to different institutions for opening of nursing/para-medical or allied medical science courses. The aforesaid general guidelines issued by the Department vide letter No.26601 dated 22.10.2019 prescribes also calendar for issuance of NOC as under:

Calendar for Issue of NOC:

Sl. No.

Event

Date/ time for new NOC

Date and time for Renewal/ Revalidation of NOC/Renewal of recognition

1.

Floating of advertisement by DMET. (no application shall be entertained without any advertisement being floated)

By 31st July every year (subject to requirement as per the GIS mapping and gap analysis)

2.

Last date of receipt of
application

16th August

By 15th January (1st December
to 15th January)

3.

Issue of Acknowledgement Letter

By 30th August

By 31st January

4.

Time for compliance of
deficiencies

By 15th September

By 15th February

5.

Inspection of institutions

By 31st October

By 15th March

6.

Compliance of deficiencies as pointed out by inspection team

By 30th November

By 31st March

7.

Recommendation to Govt. for issue or rejection of NOG by Council

By 31st December

By 15th April

8.

Approval of Government for issue /not issue of

NOC by Council

By 31st January

30th April

9.

Issue of NOC by concerned Council.

By 28th February

By 15th May

10.

Issue of

Provisional Recognition by Council

31st March

By 21st May

11.

Issue of Final / Renewal of Recognition by

Council

After the completion of Final year

examination

After the completion of Final year examination

15. We are worried over the state affairs as noted above, in the present case, and we express our anguish, for two reasons. Firstly, the opposite parties granted recognition/affiliation (if any) to these institutions on the dates when the last date of admission earlier fixed by INC had already expired. Secondly, the time schedule prescribed for issuance of NOC for opening of new nursing courses for the academic session 2023-24 has not at all been adhered to.

16. The Supreme Court has repeatedly frowned upon the authorities for not adhering to the time schedule in the matters of admission of students in professional course. In the case of Priya Gupta v. State of Chhattisgarh (2012) 7

SCC 433, after having taken note of the various earlier decisions has noticed the adverse consequences of non-adherence to the prescribed schedule in paragraph-41 as under:

"41. Inter alia, the disadvantages are:

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in *Muskan Dogra v. State of Punjab* (2005) 9 SCC 186.

(2) Midstream admissions are being permitted under the garb of extended counselling or by extension of periods for admission which again is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognized/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit."

17. In case of *Mridul Dhar v. Union of India*; (2005) 2 SCC 65, the Supreme Court has mandated that the time schedule provided in the regulations must be strictly adhered to by all concerned failing which the defaulting parties would be liable to be personally proceeded with.

18. Though the decisions in the case of *Mridul Dhar* (supra) and *Priya Gupta* (supra) relate to medical admissions, the principles enunciated therein equally

apply in professional course of ANM, GNM, B.Sc.(N), PB B.Sc.(N), M.Sc.(N) nursing courses. A belated grant of NOC/recognition/affiliation to these institutions has not only resulted into a complex situation, such action/inaction of the State has generated unnecessary litigations which could have been easily avoided, had prompt action been taken by the opposite parties, adhering to their own calendar for issuance of NOC.

19. Notably, an argument has been advanced on behalf of the petitioners that these institutions as noted above should be allowed to give admission to such students who had not participated in the entrance examination, but do possess eligibility criteria as laid down in the prospectus. The said submission has been made in the background of the fact that if they are not allowed to do so, the Management of these institutions shall have no other option, but to close the institutions. This argument is unsustainable for the single reason that the INC, which is the competent regulatory body, had clearly mandated in its notification dated 06.04.2023 (supra) that admission to B.Sc. (N) for the academic sessions 2023-24 shall be held through CEE.

20. It will be useful to notice that the requirement of holding CEE for admission to unaided privately managed professional institutions as mandatory has been addressed by the Supreme Court in case of *Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors.*, (2016) 7 SCC 353, wherein constitutional validity of “Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007” (hereinafter referred to as “2007 Act”) and admission rules framed therein were under challenge.

21. The Supreme Court, in case of *Modern Dental College & Research Centre* (supra), after having noticed earlier decisions, in the cases of *T. M. A. Pai Foundation and Others v. State of Karnataka*, (2002) 8 SCC 481, *Islamic Academy of Education & Anr. v. State of Karnataka & Ors.*, (2003) 6 SCC 697 and *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.*, (2005) 6 SCC 537 emphasized the need of CEE to be held by agencies, for admission to educational institutions, more particularly those imparting professional education, which enjoy utmost credibility and expertise in the matter to achieve fulfillment of twin objectives of transparency and merit. The Supreme Court also observed that it is in the larger public interest which warranted such measure. Taking note of malpractices in the CEE, conducted by such private institutions themselves, the Supreme Court held that in larger interest and welfare of the student community, in order to promote merit add excellence and curb malpractices, that regulatory measures should be introduced. In paragraph 68 of the decision, in case of *Modern Dental College & Research Centre* (supra), the Supreme Court held thus:-

“68. We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly, in the larger interest and welfare of the student community to promote merit, add excellence and curb malpractices. The extent of restriction

has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to “restrictions” on the right of the appellants to carry on their “occupation”, are clearly “reasonable” and satisfied the test of proportionality.”

22. Having said so, the Supreme Court, in case of Modern Dental College & Research Centre (supra), concluded that the provisions relating to admission, as contained in the Act and the Rules, were not offensive of Article 19(1)(g) of the Constitution.

23. What emerges from the decision of Supreme Court, in case of Modern Dental College & Research Centre (supra), on the question of the right of State to make provisions for CEE for admission to unaided private educational institutions, that the Supreme Court not only upheld the provisions of 2007 Act in this regard, rather emphasized its need in the larger interest and welfare of the student community to promote merit and excellence and curb malpractices.

24. The requirement prescribed by the INC of giving admissions in the nursing courses is thus, not only in exercise of its statutory powers to regulate admissions but it is in consonance with law laid down by the Supreme Court in the cases of Islamic Academy of Education (supra), T. M. A. Pai Foundation (supra), P.A. Inamdar (supra) and Modern Dental College & Research Centre (supra).

25. Considering the entire conspectus of the matter as discussed above, the reliefs which the petitioners are seeking in the present batch of writ petitions cannot be granted for the following reasons:

(i) The institutions cannot be allowed to give admissions to students for the academic sessions 2023-24 as the extended cut-off date for such admission prescribed by the INC expired on 30.10.2023 itself. The said timeline, in the Court’s opinion should not be extended by this Court exercising power of judicial review under Article 226 of the Constitution of India.

(ii) In view of the policy of the INC that admissions to such courses would be only through CEE and no candidate who has not qualified or not appeared in the CEE shall be given admission, such requirement which aims to achieve the object of admission of meritorious candidates in the courses should not be tinkered with, more so, in view of the law laid down by the Supreme Court in P.A. Inamdar (supra) and Modern Dental College & Research Centre (supra).

26. However, while rejecting the reliefs sought for in the present batch of writ petitions, we deem it just and proper to issue following directions in the interest of justice and to avoid recurrence of such situation, as has arisen in the present batch of cases in future, because of non-adherence to the calendar prescribed by the Health and Family Welfare Department, Government of Odisha: -

(i) All concerned shall, without any exception, adhere to date/time schedule prescribed by the Government of Odisha in the Health and Family Welfare

Department vide Letter No.26601 dated 22.10.2019; for issuance of NOC and grant of recognition.

(ii) There shall be no departure, in any case, from the said time schedule without the leave of this Court. Any departure from time schedule shall be viewed seriously by this Court.

(iii) Unless otherwise provided by the INC, no admissions shall be given by any nursing institution in the courses without merit-based CEE.

(iv) No admission shall be given to any student in a nursing institution after the cut-off date for admission, as may be prescribed by the INC.

27. While parting with the present judgment, we deem it apposite to notice, which is apparent from the records, that admissions have been allowed in B.Sc (N) courses even after the expiry of cut-off date. We express our serious concern over this happening. For the present, however, we are not expressing any opinion, in the present proceeding, about the consequences of such admissions, if that have been given breaching the INC guidelines.

28. With the aforesaid observations and directions, these writ petitions stand disposed of.

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