
(2020) 09 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 110 Of 2020

Keshav Baliram Hedgewar Paryayi APPELLANT
Vs
State Of Maharashtra And Ors RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Maharashtra State Board Of Nursing And Paramedical Education Act, 2013 — Section 28
Industrial Disputes Act, 1947 — Section 10, 14, 15
Constitution Of India, 1950 — Article 14

Citation : (2020) 09 BOM CK 0025

Hon'ble Judges : Sunil B. Shukre, J; Anil S. Kilor, J

Bench : Division Bench

Advocate : Firdoz Mirza, A.M. Madiwale, Gauri Venkatraman

Final Decision : Allowed

Judgement

Anil S. Kilor, J

1. A proposal of the petitioner to start General Nursing and Midwifery (GNM) course at Wardha, has been rejected by the respondent State Board of Nursing vide its communication dated 31st December 2019, in view of the Notifications dated 28th February 2019 and 14th March 2019, issued by the Indian Nursing Council, informing that the Council has resolved to phase out 'GNM' course from the year 2020-21 in compliance with the 'National Health Policy 2017'. The communication of the State Board dated 31st December 2019 and notifications issued by the Council, dated 28th February 2019 and 14th March 2019, have been questioned in the present petition by the petitioner.
2. Heard Shri Firdos Mirza, learned counsel for the petitioner, Ms. Gauri Venkatraman, learned counsel for the respondent No. 3 and Shri Amit Madiwale, learned Asst. Government Pleader for respondent Nos. 1 and 2.
3. Shri Firdoz Mirza, learned counsel for the petitioner submits that the

impugned notifications / orders dated Dated 28th February, 2019, 14th March, 2019 and 19th September, 2019 issued by the respondent Council cannot override or control the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013 (the Act, 2013).

4. He further submits that the letters of Indian Nursing Council cannot be treated as legal documents as they have no legal force in absence of a publication of any such declaration in Official Gazette as required under the provisions of law and thus acting upon the same while rejecting the proposal of the petitioner, is illegal.

5. Shri Mirza, learned counsel for the petitioner further argues that it is a settled principal of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. It is submitted that the action on the part of the respondent-Board, rejecting the proposal of the petitioner is contrary to mandate of Section 28 of the Act, 2013.

6. Shri Firdos Mirza, learned counsel for the petitioner further argues that the respondent Indian Nursing Council has no authority to grant recognition to the nursing courses, but the said power lies with the State Board and therefore any direction issued by the Nursing Council is not binding on the respondent, State Board. For this purpose he has relied upon the judgment of this Court dated 9th October 2017 passed in Writ Petition No. 11260 of 2017 in the case of Private Nursing School College Management Association Vrs. Union of India and others.

7. It is submitted that for the year 2019-2020 permissions have been granted to some colleges to start GNM courses, by the State Board whereas on the other hand it has been denied to the petitioner citing the resolution of the Council, relating to phasing out GNM course from 2020-21. Hence according to him it is in violation of Article 14 of the Constitution of India.

8. Per contra, Shri A.M. Madiwale, learned Assistant Government Pleader points out that the instructions or the directions issued by the Council which are based on 'National Health Policy 2017', are binding on the State Board and the State Board has rightly acted upon the direction of the Indian Nursing Council. Thus, he submits that no illegality has been committed by the respondent-Board in rejecting the proposal of the petitioner.

9. Ms. Gauri Venkatraman, learned counsel for the respondent no.3, submits that the petitioner has no legal right under the law to start new GNM course, whereas it is the discretion of the State Board whether to grant such permission or not, under the provision of the Act, 2013.

10. She further draws attention of this Court to the provisions of the Act, 1947 and thereby points out that in view of Section 10 of the Act, 1947 the power to grant recognition to qualifications lies with the Council and under Section 14 the Council is empowered to withdraw recognition. It is submitted that the decision of grant of recognitions or withdrawal of recognition, is binding on the State Board, even as per the provision of the Act, 2013.

11. She points out that, the role of statutory expert bodies on education and the role of the courts in such matters are well defined. Wherever a question of educational policy or an issue involving academic matter arises, it is a settled law that the courts keep their hands off. In support of her contention she has placed reliance on the judgments of the Hon'ble the Supreme Court of India in a case of All India Council of Technical Education Vrs. Surinder Kumar Dhawan and others reported in 2009 (11) SCC 726 and in a case Sanchit Bansal and another Vrs. Joint Admission Board and others reported in 2012 (1) SCC 157.

12. She further points out that rejection of a proposal of the petitioner was in pursuance to the communication issued by the Government of India, Ministry of Health & F.W (Nursing Section) dated 5th October, 2017, focusing the National Health Policy 2017. Thus, showing any indulgence in the present matter would amount to interference in the 'National Health Policy-2017' or the policy decision of the Government of India.

13. She lastly submits that, the Council vide impugned notifications issued an advisory to the State Government, however there was no declaration about actual withdrawal of recognition to GNM course, therefore, Gazette publication is unwarranted and not required. Arguing so she prays for dismissal of the petition.

14. To consider the rival contentions of the parties, we have carefully perused the record and also gone through the relevant provisions of the Act, 1947 and the Act, 2013 and also the judgments cited by the rival parties.

15. A question that emanates for our consideration against the backdrop of aforementioned arguments, is as follows:-

"In absence of a publication in Official Gazette about withdrawal of recognition to GNM course by the Council, whether the impugned notifications dated 28th February, 2019 and 14th March, 2019, issued by the Council in pursuance to the letter issued by the Government of India, Ministry of Health & F.W. (Nursing Section), dated 5th October, 2017 which is based on 'National Health Policy-2017', are binding and obligatory for the Maharashtra State Board"

16. In the case at hand the State Board published perspective plan showing the requirement of one Nursing college and one college of General Nursing and Midwifery (GNM) course for Wardha District. The petitioner being interested in starting GNM course at Wardha from the academic year 2018-19 submitted a proposal to the State Board, in pursuance to the said perspective plan.

17. Lapse in carrying out inspection by the Board drove the petitioner to file a Writ Petition no. 6327 of 2019 seeking writ to carry out inspection by the State Board. Consequently, the inspection was carried out because of Court's direction. However, the proposal of the petitioner for grant of permission to start GNM course has been turned down vide communication dated 31st December, 2019, citing the Indian Nursing Council's notifications dated 28th February, 2019 and 14th March, 2019 and communication dated 19th September 2019 as a basis for

said rejection.

18. The letter of rejection of proposal of the petitioner dated 31st December, 2019 reads thus:

"विशय: जी. एन. एम. अभ्यासक्रमास मान्यता मिळण्याबाबत.

संदर्भ: 1) प्रबंधक, महाराष्ट्र राज्य शुश्रूषा व परावैद्यक शिक्षण मंडळ, मुंबई यांचा दि. 16.12.2019 रोजीचा तपासणी अहवाल.

2) मा. उच्च न्यायालय, मुंबई, खंडपीठ नागपूर यांचे रिट याचिका क्र. 6327/2019 च्या अनुशंगाने दि.09.12.2019 रोजीचे आदेश.

3) भारतीय परिचर्या परिशदेचे पत्र दि.19.09.2019.

4) भारतीय परिचर्या परिशदेचे पत्र दि.14.03.2019.

5) भारतीय परिचर्या परिशदेचे पत्र दि.28.02.2019.

महोदय,

आपला ए. एन. एम. व जी. एन. एम. अभ्यासक्रमास मान्यता मिळण्याबाबतचा प्रस्ताव दि. 28.08.2018 रोजीच्या आपल्या पत्रान्वये महाराष्ट्र राज्य शुश्रूषा व परावैद्यक शिक्षण मंडळ, मुंबई यांना प्राप्त झाला होता. सदर प्रस्तावाच्या अनुशंगाने रिट याचिका क्र.6327/2019 अन्वये मा. उच्च न्यायालय, मुंबई, खंडपीठ नागपूर यांनी संदर्भ क्र.2 प्रमाणे आदेश पारित केले आहेत. सदर आदेशास अनुसरून संदर्भ क्र.1 येथील पत्रान्वये महाराष्ट्र राज्य शुश्रूषा व परावैद्यक शिक्षण मंडळ, मुंबई यांनी तपासणी अहवाल सादर केला आहे.

तथापी, भारतीय परिचर्या परिशदेचे संदर्भ क्र.3, 4 व 5 येथील पत्रातील निर्देशाच्या पात्रभूमीवर आपल्या संस्थेच्या जी. एन. एम. अभ्यासक्रमाच्या नवीन महाविद्यालयास मान्यता देण्याबाबतचा प्रस्ताव अमान्य करण्यात येत आहे."

19. At this juncture it is pertinent to consider the background and the reasons behind issuance of the impugned notifications and communications by the Council, which are referred in the above communication dated 31st December, 2019.

20. After the National Health Policy 1983 and 2003 in the changed current context, the health priority changed, therefore, to reach everyone in a comprehensive integrated way to move towards wellness, the National Health Policy, 2017 was framed.

21. The National Health Policy, 2017 is being monitored closely by Prime Minister's Office, Ministry of Health & F.W. (Nursing Section), Government of India vide communication dated 5th October, 2017, apprising certain actions decided to be taken through Indian Nursing Council, to the President of Indian Nursing Council.

22. Relevant portion, for the purpose of this petition of a communication dated 5th October, 2017 issued by Government of India, Ministry of Health & F.W. (Nursing

Section) reads thus:

To,

The President,

Indian Nursing Council, New Delhi- 110020

"As you may be aware, the implementation of National Health Policy, 2017 is being monitored closely by the Prime Minister's Office. The key initiatives in the implementation framework on which action is required to be taken by Indian Nursing Council is as listed below :

"i. Single entry level for Nursing : To ensure the quality of nursing education, the implementation framework seeks to merge GNM schools with B.Sc. (N) and have a single entry level qualification as B.Sc.(N) for nurses by redesigning the B.Sc. curriculum as practical based and by phasing away the GNM course. INC is required to take steps to phase out GNM courses. Timeline : 5 years, by March, 2022.

ii

iii

iv

v

vi

2. You are requested to initiate necessary steps to complete the above works in a time bound manner and ensure that timelines are strictly adhered to. It may please be ensured that the updated status of implementation of the NHP is required to be furnished to this Ministry by the last day of each month positively."

23. In the above letter one of the actions which was guided to be taken by the Indian Nursing Council was relating to 'Single Entry Level for Nursing' to ensure the quality of nursing education and for which it was decided to merge GNM Schools with B.Sc.(N) and have a 'single entry level' qualification as B.Sc.(N).

24. Consequently, the Indian Nursing Council issued impugned Notifications dated 28th February 2019 and 14th March 2019, apprising the State Government's about the resolution passed on 2nd December, 2018 in the Governing Body meeting of Indian Nursing Council pertaining to Phasing away of existing GNM course by the year 2020-21. The notifications read thus:

Notification 28th February, 2019

Sub : Resolutions approved by Governing Body in the Meeting held on 2.12.2018- Conversion of School of Nursing to College of Nursing - reg.

In National Health Policy 2017, monthly report to PMO one of the key initiative in the implementation framework is Single Entry Level for Nursing:- To ensure the quality of nursing education, the implementation framework seeks to merge GNM

Schools with B.Sc.(N) and have a single entry level qualification as B.Sc.(N) for nurses by redesigning the B.Sc. curriculum as practical based and by phasing away the GNM course.

Keeping in view the above the Council has resolved that the existing GNMs shall be phased out by the year 2020-21 and shall be converted into College of Nursing. The various modalities are being worked out which will be informed in due course of time."

Notification 14th March 2019

Sub : Single Entry Level for Nursing - Phasing out of GNM programme.

In continuation of Notification F.No.I-5/2018-INC dated 28th February, 2019 on the subject noted above, it is further clarified that:

(i) Last admission year for GNM Training programme will be 2020-2021 academic year.

(ii) No admission will be made to GNM programme in 2021-2022 academic year and thereafter.

(iii) GNM trainees who are admitted in and prior to 2020-21 will continue their batch till they complete the programme.

Vide earlier Notification of INC dated 28th February, 2019, it is stated that "The existing GNM's shall be phased out by the year 2020-21" the same should be read as the GNM Training Programme shall be phased out by the year 2020-21.

25. There is no doubt that the 'National Health Policy 2017', had given cause to the Ministry of Health and F.W., Government of India to issue communication dated 5th October, 2017, which became a reason for passing of a resolution dated 2nd December 2018 in a meeting of the Governing Body of the Council, which further resulted into issuance of the impugned notifications dated 28th February and 14th March 2019 and communication dated 19th September 2019 by the council. However, the question in the matter concerned, is whether in absence of a declaration about withdrawal of recognition to GNM course, above referred notifications are binding on the State Board.

26. Hence after having paid attention to facts of the matter in hand now we would examine the relevant law on the question involved.

27. Thus, at this juncture it is germane to refer to the relevant provisions of the Act, 1947 and the Act, 2013.

Sections 10,14 and 15 of the Act, 1947, read thus :

Section 10: Recognition of qualifications. (1) For the purposes of this Act, the qualifications included in [Part I of] the Schedule shall be recognised

qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the [States] which, being recognised by the [State] Government [in consultation with the State Council, if any] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, [auxiliary nursing midwifery], health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognized qualification for the purposes of this Act.

(3).....

(4).....

Section 14: Withdrawal of recognition. (1) When, upon report by the Executive Committee, it appears to the Council-

(a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any [State], or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b)

(2)

(3)

(4) The Council may declare that any recognised qualification granted outside the [States] shall be a recognised qualification only if granted before a specified date.

Section 15: Mode of declarations. (1) All declarations under section 10 or section 14 shall be made by resolution passed at a meeting of the Council called for the purpose, and shall forthwith be published in the Official Gazette.

(2)....

28. Now moving to sections Section 28 of the Act, 2013, which reads thus:

Section 28. (1): The Board shall grant permission to start new nursing and Paramedical Institution by observing the standards laid down under the Indian Nursing Act, 1947 and the directions issued by the Central Government regarding Paramedical Education as per the provisions specified under this Section.

(2).....

(3).....

(4).....

(5) Out of the applications recommended by the Board, the Government may grant permission to such institution as it may consider right and proper in its absolute discretion, taking into account the Government's budgetary resource, the suitability of the management seeking permission to open new institutions and the State level priorities with regard to location of institutions for Nursing and Paramedical Education.

(6).....

29. In summary the import of the above referred provisions, is as follows :

a) Under the provisions of sections 10 and 14 of the Act, 1947, the council is empowered to grant or withdraw recognition respectively, subject to publishing such declaration as per section 15 of the Act, 1947, in the Official Gazette.

b) Grant of permission to start new institute under section 28, is discretionary, taking into account, inter-alia, the suitability of the management seeking permission to open new institution, by observing the standards laid down under the Act, 1947 and directions issued by the central Government regarding Paramedical Education.

30. The Hon'ble the Supreme Court of India in the case of *Rajendra Agricultural University v. Ashok Kumar Prasad*, (2010) 1 SCC 730, has held thus:

"17. Any person interested in appointment in the university service as a teacher or non-teaching staff or officer is entitled to know the qualifications prescribed for the post and the manner/mode of selection and appointment. The students or prospective students are entitled to know the fees which may be charged by the university. The Statute made for maintenance of discipline amongst the students concerns the large body of the student community which keeps changing periodically. If the Statutes made on these topics are not published in the Official Gazette, the persons concerned may never come to know about them. Therefore, the provision contained in Section 36(4) requiring publication of Statutes in the Official Gazette, which applies to all Statutes framed by the University, has to be treated mandatory. The fact that a particular Statute may not concern the general public, but may affect only a specified class of employees, is not a ground to exclude the applicability of the mandatory requirement of publication in the Official Gazette, to that Statute in the absence of an exception in Section 36(4) of the Act.

18. The question can be looked at from another perspective also. The contentions urged by the respondents may be good grounds for the legislature to conclude that there need not be a provision in the Act for publication in the Official Gazette, when they relate to a small section of employees of the University and consequently, amend Section 36(4) providing for a simpler mode of publication in such cases. But the contentions are not relevant grounds for holding that a statutorily enacted mandatory requirement relating to publication

in the Official Gazette, is directory. The respondents cannot by importing the reasons for making a statutory provision, or the object of making a statutory provision, attempt to defeat the specific and unambiguous mandatory requirements of that statutory provision.

19. As noticed above, several reasons might have contributed to making of a statutory provision providing for publication of all Statutes in the Official Gazette. All those reasons may not apply or exist in regard to making of an individual statute. But once the law lays down that publication of a Statute in the Official Gazette is a part of the process of making a statute, the object of making such a provision for publication recedes into the background and becomes irrelevant, and on the other hand, fulfilment of the requirement to make public the Statute by publication in the Official Gazette becomes mandatory and binding.

21. In *B.K. Srinivasan v. State of Karnataka* this Court explained why publication in the gazette was mandatory and necessary in regard to subordinate legislations: (SCC p. 672, para 15)

"15. There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes' 'unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed."

24. This Court in *Bhadrachalam* case held that the requirement under Section 11 of the Act relating to publication of the government order in the gazette, was mandatory and that where an enactment requires an act (making a government order) to be done by the Government only in the manner prescribed therein, then non-compliance with the mandatory statutory requirement will make the act (making of a government order) invalid and consequently, the government order cannot be considered as a valid and binding one, nor as a representation held out by the Government, creating any right to seek the benefit of that government order by invoking the principle of promissory estoppel against the Government."

31. Thus in the matter in hand, from the above referred judgment it is abundantly clear that once section 15 of the Act 1947, lays down that all declarations under section 10 or section 14 shall be made by resolution passed at a meeting of the Council called for the purpose, and shall forthwith be published in the Official Gazette, the said requirement relating to publication of a declaration in Official Gazette, is mandatory.

32. It is a well settled law that where an enactment requires an act to be done in the manner prescribed therein, then non-compliance with the mandatory statutory requirement will make the act invalid and consequently, such act cannot be considered as a valid and binding one.

33. In the present matter admittedly no declaration under section 14 of the Act, 1947, withdrawing recognition of qualification, GNM course has been published in the Official Gazette as mandated under section 15 of the Act, 1947.

34. A decision of the Council to phase out the GNM course from the year 2020-21 or any notification issued in that regard for the information of public in general, would not acquire the element of operativeness and enforceability, unless the same is published in the Official Gazette as required in the law. And in absence of such publication in Official Gazette, it can be said that the process of phasing out GNM Course has commenced or is going on.

35. The Council here in the present matter issued two notifications dated 28th February, 2019 and 14th March, 2019 in pursuance of a resolution of the Governing Body of the Council, resolving to phase out the GNM course from 2020-

21. However said resolution or notification has not yet been published in the Official Gazette. The Hon'ble the Supreme Court of India in a case of Subhash Ramkumar Bind v. State of Maharashtra, (2003) 1 SCC 506, has observed thus Notification in common English acceptation means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the Official Gazette, the same cannot but mean a notification published by the authority of law in the Official Gazette

36. It is pertinent to note that even it is the case of the Council that the nature of impugned notifications, is only an advisory issued to the State Government intimating the policy decision.

37. The Council in its written notes of argument at page 14, admits in clear terms that on the date when the impugned notifications were issued, there was no declaration about actual withdrawal of recognition to GNM course and the existing GNM schools are still conducting the said course.

38. In the light of discussions made above, we are of the firm view that in absence of a publication in Official Gazette about withdrawal of recognition to GNM course by the Council, the impugned notifications dated 28th February, 2019 and 14th March, 2019, issued by the Council in pursuance to the letter

issued by the Government of India, Ministry of Health & F.W. (Nursing Section), dated 5th October, 2017 which was based on 'National Health Policy-2017', are not binding and obligatory for the Maharashtra State Board.

39. Consequently rejection of proposal of the petitioner to start new GNM course, vide communication dated 31st December 2019, issued by the respondent State Board, on the ground of issuance of impugned notification by the Council, is not in conformity with the provisions of the Act, 1947 and also the Act, 2013 and therefore, the same needs to be set aside.

40. We are well conscious about a settled law position that the role of statutory expert bodies and role of Courts are well defined by a simple rule that if it is a question of educational policy or an issue involving academic matter, the Courts are to keep their hands off, as the Courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education.

41. In the present matter admittedly the petitioner has not questioned the legality or correctness of the 'National Health Policy' or of the communication dated 5th October 2018, issued by Government of India addressed to the Council. In the said backdrop we reject the contention of the learned counsel for the respondent No. 3 that showing any indulgence in this matter amounts to interference in 'National Health Policy' or policy of the Government of India. It is made clear that we have not commented anything about the 'National Health Policy 2017' or any Government of India's policy, in this matter.

42. For the above reasons the judgments in the case of All India Council of Technical Education Vrs. Surinder Kumar Dhawan and others (supra) and in the case of Sanchit Bansal and another Vrs. Joint Admission Board and others (supra) are of no help to the respondent No. 3.

43. Now moving to the contention of the petitioner that the Respondent-Nursing Council has no authority to grant recognition to the nursing courses but the said power lies with the State Board and therefore any direction issued by the Nursing Council is not binding on the Respondent-State Board. In the present matter, the issue is in respect of grant or withdrawal of recognition to qualification GNM Course and not the issue of granting recognition by the State Board to the institute to start college of GNM course. Therefore, the said contention of the petitioner cannot be accepted and for the said reason the judgment cited by the petitioner in the case of Private Nursing School College Management Association Vrs. Union of India and others (supra) is not applicable to the present case.

44. Further as regards arguments advanced by the learned counsel for the petitioner as regards violation of Article 14 of the Constitution of India, we are of the opinion that in view of the observations made above, we do not find it necessary to go into the said contention of the petitioner.

45. Accordingly, the writ petition is allowed.

46. The impugned communication dated 31st December 2019, issued by the State Board, is set aside and the respondent No. 2, State Board is directed to consider the proposal of the petitioner to start the GNM course at Wardha from the year 2020-21, on its own merit. It is further made clear that unless the decision is published in Official Gazette as provided under section 15 of the Act, 1947, about derecognition of qualification to GNM course, it shall be treated that the said course is having recognition of the Council.

No order as to costs.