

(2017) 03 CAL CK 0070
In the Calcutta High Court
Case No : 1113 (W) of 2017

Miss Sonali Nandi

APPELLANT

Vs

The West Bengal Nursing Council & Ors.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

[Advocates Act, 1961](#), [Section 7](#) -
Bengal Nurses Act, 1934, Section 18, Section 19(c)

Citation : (2017) 03 CAL CK 0070

Hon'ble Judges : DEBANGSU BASAK

Bench : SINGLE BENCH

Advocate : Mukul Lahiri, Prosenjit Burman, ?Sovan Bera, ?Puja Beriwal, ?
Sushovan Dey, ?Sirsanya Bandopadhyay, ?Pratik Dhar, ?Rittwik Pattanayak

Judgement

1. The petitioner assails the refusal of the West Bengal Nursing Council to register the petitioner as a nurse.
2. Learned Senior Advocate appearing for the petitioner submits that, the petitioner had passed class XII in the Science stream. She had passed the B.Sc. (Nursing) course conducted by the West Bengal University of Health Sciences. The petitioner had, thereafter, applied for registration as a nurse. Such registration was rejected as appearing in the writing dated December 5, 2016 of the West Bengal Nursing Council. Referring to such writing the learned Senior Advocate for the petitioner submits that, two grounds have been cited in such rejection. He submits that, the first ground being that the petitioner did not fulfil the criteria of Section 19(c) of the Bengal Nurses Act, 1934 is not applicable in the facts of the case. The second ground of rejection that the petitioner does not have the eligibility criteria to undergo B.Sc. (Nursing) as laid down by the Indian Nursing Council (INC) as well as in the JENPARH brochure is also incorrect. The petitioner having passed B.Sc. (Nursing) from a recognized institution namely, West Bengal University of Health Sciences, the petitioner is entitled to be registered as a nurse with the West Bengal Nursing Council.

3. Learned Senior Advocate for the West Bengal Nursing Council submits that, the petitioner did not fulfil the eligibility criteria to undertake the study of B.Sc. (Nursing). Therefore, the petitioner is not eligible to be registered as a nurse as she does not have the requisite qualification to enter into such course. He relies upon 2015 Volume 4 Supreme Court Cases page 498 (Archana Girish Sabnis v. Bar Council of India & Ors.) and submits that, the Council is within its rights to reject a registration of a nurse on the ground that the person did not fulfil the eligibility criteria to seek an admission in the course concerned. He refers to the impugned writing dated December 5, 2016 and submits that, the rejection of the application for registration made by the petitioner was done on the ground of violation of Section 18 of the Bengal Nurses Act, 1934 rather than 19(c) of such Act. He emphasizes that, the second ground of rejection as contained in the impugned writing is one under Section 18 of the Act of 1934. In support of the contention that, there is a prescription of the eligibility criteria to undertake a nursing course, reliance is placed on the eligibility criteria as published by the Indian Nursing Council for the relevant academic year so far as the petitioner is concerned. Reliance is also placed on the West Bengal Council of Higher Secondary Education notification dated October 11, 2006 to suggest that, the petitioner did not pass the Chemistry paper. Reliance is also placed on a notification dated March 13, 1981 issued by the Government of West Bengal, Department of Health and Family Welfare with regard to the Rules regulating the admission of students to B.Sc. Honours (Nursing) course in West Bengal.

4. In reply the learned Advocate for the petitioner submits that, a decision has to be read in the context of the factual matrix that it was rendered in. He relies upon 2014 Volume 5 Supreme Court Cases page 75 (Dr. Subramanian Swamy v. State of Tamil Nadu & Ors.) and 1975 Volume 1 Supreme Court Cases page 559 (Ramchandra Keshav Adke v. Govind Joti Chavare) in support of such proposition. He submits that, Archana Girish Sabnis (supra) is not applicable to the facts of the present case. He refers to the notification dated March 13, 1981 issued by the Department of Health and Family Welfare and submits that it relates to a B.Sc. Honours (Nursing) course while the course concerned here is a Pass Graduate course. Moreover, such notification is of the Department of Health and Family Welfare and the same not of the Nursing Council is under the provisions of Bengal Nurses Act, 1934. He contends that, the petitioner had passed the Chemistry paper. He also contends that, there is no prescription under the Bengal Nurses Act, 1934 which the petitioner did not comply with. The registration, therefore, has been wrongfully denied.

5. The issue for consideration in the present writ petition is whether the Nursing Council is entitled to reject, an application for registration as a nurse made by the petitioner who has passed B.Sc. (nursing) from an institute recognized by the Nursing Council on the ground that, the petitioner does not fulfil the eligibility criteria to pursue a B.Sc. (Nursing) course or not.

6. The petitioner had appeared in the Higher Secondary examination organized

by the West Bengal Council of Higher Secondary Education in 2011 in Science stream with Biology, Mathematics and Physics as compulsory elective subjects and Chemistry as optional elective subject. She had appeared in JENPHAR, 2012 organized by the West Bengal Joint Entrance Board for admission in B.Sc. (Nursing). The petitioner was successful therein. He had participated in the counseling. She was selected for studying B.Sc. (Nursing) at the College of Nursing, Asia Heart Foundation, Kolkata. She had undertaken such course in the year 2012. After joining the college she had applied for registration with the West Bengal University of Health Sciences. She was registered as a bonafide student under such University. During her continuance of studies, she was informed that she did not fulfil the eligibility criteria for admission to the course. By a letter dated June 26, 2016 the Principal of the college discontinued her studies. She had filed a writ petition being W.P. No. 8410 (W) of 2016 against the West Bengal University of Health Sciences and Others. Such petition was disposed of by a judgment and order dated May 16, 2016 by directing the petitioner to be treated as a bonafide student. She was permitted to fill up the form for the Part-4 examination. Consequent to such order she had studied the B.Sc. (Nursing) course. She had passed such course. She had, thereafter, applied for registration as a nurse with the respondent no. 1. By the impugned writing dated December 5, 2016, the respondent no. 1 had turned down the request for registration on the ground that, the petitioner does not fulfil the eligibility criteria to undertake the B.Sc. (Nursing) course.

7. The West Bengal Nurses Act, 1934 recognizes the persons entitled to be registered as nurses in Section 18 thereof. Section 18 of the Act of 1934 is as follows:- "18. The following persons shall, on payment of such fees as may be prescribed, be entitled to registration under this Act, namely:-

(a)nurses, midwives and health visitors who have undergone the courses of training, have passed the examinations and fulfil such further conditions as may be prescribed;

(b)nurses, midwives and health visitors who are already in practice at the commencement of this Act and are not entitled to registration under clause (a), subject to such conditions and restrictions as may be prescribed:

provided that nurses and midwives who at the commencement of this Act are enrolled on the registers maintained by the State Medical Faculty of West Bengal shall be entitled to have their names transferred according to their qualifications to the appropriate parts of the respective registers to be maintained under this Act without being required to undergo further training and examination and without being required to pay fees."

8. A person who has passed an examination for such purpose and who fulfils further conditions as may be prescribed is entitled to be registered as a nurse. The Indian Nursing Council has prescribed the eligibility criteria for nursing programmes. This prescription is not denied by the parties. It requires, inter alia,

a minimum education of 10+2 passed with Science (Physics, Chemistry and Biology) and English core/ English elective with aggregate of 45 per cent marks from a recognized Board. The petitioner claims to have passed 10+2 from the West Bengal Council of Higher Secondary Education with Biology, Mathematics and Physics as compulsory subjects and Chemistry as optional elective subject and English as a compulsory subject. West Bengal Council of Higher Secondary Education by a notification dated October 11, 2006 has prescribed in Regulation 20(4) thereof that, in order to be declared pass in any examination, a candidate must obtain 30 per centum in compulsory subjects. It also provides that, the examination of any subject which consists of theoretical paper or practical paper, in order to be declared pass in the concerned subject, a candidate has to score 30 per centum of marks in theoretical paper or practical paper or project work thereon separately. In the present case, the petitioner has Chemistry as optional elective subject. She has scored 17 in the theory and 17 in practical. So far as the theory portion of the Chemistry as optional elective paper is concerned, the petitioner did not score 30 per centum of marks. She, therefore, cannot be considered to have passed in the Chemistry subject. The West Bengal Council of Higher Secondary Education did not consider her pass in such Chemistry optional elective paper also. The Council did not give her a subject grade in respect of such subject. The mark sheet of the petitioner bears this out.

9. Notwithstanding the petitioner failing to score the requisite pass marks in the optional elective paper, she was admitted to a nursing course. She was allowed to complete the course. She has completed her nursing course. She now claims that, having passed the nursing course, the Nursing Council is obliged to register her as nurse. The Nursing Council has found that, the petitioner did not have the requisite qualification to get herself admitted to a nursing course. In the writ petition filed by the petitioner, she was allowed to continue her studies in the nursing course. The Nursing Council was not a party respondent in such writ petition. The order passed in such writ petition is, therefore, not binding upon the Nursing Council.

10. In Archana Girish Sabnis (*supra*) a candidate had obtained admission to a LLB course. She had passed the LLB examination. She was, however, refused registration by the Bar Council of India on the ground that the candidate did not have the requisite qualification to undertake the LLB course. After noticing various sections of the Advocates Act, 1961 including Section 7 thereof the Supreme Court has held that, pursuing law and practicing law are two different things. One can pursue law but for the purpose of obtaining licence to practice the candidate must fulfil all the requirements and conditions prescribed by the Bar Council of India. The relevant paragraphs 24, 25 and 29 of the report are as follows:-

"24. The Bar Council of India Rules provide that for the purpose of joining the course in law for a degree, candidate must be a graduate of any University or must possess such academic qualifications which are considered equivalent to a

graduate degree of a University recognized by the Bar Council of India. As noticed above, Section 7 and Section 49 specifically empower the Bar Council of India to make rules prescribing a minimum qualification required for admission for the course of degree in Law from any recognized University."

"25. In our view, the High Court has rightly held that Bar Council has the independent power to recognize any equivalent qualification to a graduate degree for the purpose of admission in the course of graduate degree in Law."

"29. We, therefore, after giving our anxious consideration in the matter, are of the definite opinion that the Bar Council of India is not bound to grant a license as claimed by the appellant. Pursuing Law and practicing Law are two different things. One can pursue Law but for the purpose of obtaining license to practice, he or she must fulfill all the requirements and conditions prescribed by the Bar Council of India. We do not find any reason to differ with the view taken by the High Court."

11. In the present case, the petitioner has pursued B.Sc. (Nursing). The registration as a nurse, however, lies with the Nursing Council. The Nursing Council is entitled to prescribe the requirements and conditions for enrolment of a nurse under the Act of 1934. The Nursing Council has done so. The petitioner does not fulfil all the conditions so prescribed. The Nursing Council is, therefore, within its rights in refusing to register the petitioner as a nurse.

12. Dr. Subramanian Swamy (supra) and Ramchandra Keshav Adke (supra) have been cited for the proposition that the ratio of a decision must be understood in background of facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. Those two authorities in my view, does not lessen the binding nature of the ratio laid down in Archana Girish Sabnis (supra) in the facts of the present case.

13. It is contended on behalf of the petitioner that, the impugned letter of rejection refers to a different section which is other than Section 18 of the Act of 1934. At the hearing, it is conceded on behalf of the Council that Section 19 has no manner of application. However, the other ground of rejection that, the candidate does not fulfil the eligibility criteria is available to the Council in view of Section 18 of the Act of 1934.

14. In such circumstances, I find no merit in the present writ petition. W.P. No. 1113(W) of 2017 is dismissed. No order as to costs.

15. Urgent certified website copies of this judgment, if applied for, be made available to the parties upon compliance of the requisite formalities.