

(2010) 10 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) No. 5604 of 2010

Ms. Bessy Edison and Another

APPELLANT

Vs

Indira Gandhi National Open University and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Constitution of India, 1950 — Article 142, 226

Indian Nursing Council Act, 1947 — Section 10(2), 11, 12, 13

Citation : (2011) 176 DLT 335 : (2011) 121 DRJ 238

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Wills Mathews and D.K. Tiwari, for the Appellant; Sandeep Sethi Aly Mirza and Sindhu Sinha, Parag P. Tripathi, ASG, V.S.R. Krishna and Shadan Farasat for R-2/INC and R.V. Sinha and Sangita Rai for R-4, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The two petitioners filed this petition pleading that they had in the year 2009 and 2008 respectively completed and passed the course of Post Basic B.Sc. in Nursing from the respondent No. 1 Indira Gandhi National Open University (IGNOU) with study centre at Safdarjung Hospital and were awarded the Degrees therefore ;that they had in July, 2010 applied for admission to the course of M.Sc. Nursing in respondent No. 4 Nightingale Institute of Nursing; that the respondent No. 4 demanded NOC of the respondent No. 2 Indian Nursing Council (INC) for confirmation of admission of the petitioners; that the petitioners accordingly applied to INC but INC vide its letter dated 4th August, 2010 informed the petitioners that INC had only approved 11 study centres for Post Basic B.Sc. Nursing Programme through distance learning by IGNOU and Safdarjung Hospital was not included therein and thus denying registration to the petitioners for M.Sc. Nursing Course in the respondent No. 4 College. The petitioners claim that they, thereafter approached the IGNOU which confirmed that it was recognized for granting Degree for Post Basic B.Sc. Nursing Course and the Degree awarded to the petitioners was valid. The petitioners averring that they are caught between IGNOU and INC filed this petition claiming

the relief of issuance of direction to INC to approve the Post Basic B.Sc. Nursing Course of IGNOU with study centre at Safdarjung Hospital to enable the petitioners to pursue M.Sc. Nursing course at the respondent No. 4 College.

2. Notice of the petition was issued. The counsel for IGNOU on 10th September, 2010 contended that the Post Basic B.Sc. Nursing Programme of IGNOU was recognized by INC. It was further contended that while granting the said recognition no restriction was placed that the recognition was granted for the programme/course only with respect to a particular study centre. The counsel for INC however contended that in pursuance to recognition, IGNOU was required to seek approval for each study centre and no approval for the study centre at Safdarjung Hospital was sought and thus the course / programme conducted by IGNOU at the said study centre and the Degree awarded therefore is not valid. In view of the said competing claims, both IGNOU and INC were directed to file affidavits. The counsel for IGNOU, during the hearing on 6th October, 2010, produced certain additional documents and opportunity was given to INC to respond to the same.

3. It is the case of IGNOU that it was the INC itself which had approached IGNOU as far back as in the year 1988 to commence the Post Basic B.Sc. Nursing Programme with a duration of three years through distance education; that after compliance of various formalities, the first batch of the course commenced in the year 1997; that between the years 1988-97, INC, at no point of time required IGNOU to have approved its study centres where the education in the said course/programme was to be imparted and a blanket approval had been given by INC to IGNOU. With respect to Safdarjung Hospital it is pleaded that the same is independently approved and recognized by INC and State Nursing Council for conducting GNM Programme and now B.Sc. Nursing Programme; that it has been acting as a study centre for IGNOU for B.Sc. Nursing Programme since April, 1997; that from 1997 to 2009, 150 students had graduated from the said centre and of which one has already completed M.Sc. Nursing and two are in the final year of M.Sc. Nursing and three others are in the first year of M.Sc. Nursing. It is also pleaded that two students from the centre at Safdarjung Hospital have been awarded gold medal for securing highest marks in the country. It is yet further pleaded that Safdarjung Hospital is also a centre for practical training sessions of RAK College of Nursing. It is also the plea of IGNOU that in the year 2005 the Secretary of INC was part of the faculty of the School of Nursing, Safdarjung Hospital for the course of Post Basic B.Sc. in Nursing being run by IGNOU. It is further the case of IGNOU that INC in 1999 sought inspection of IGNOU programme and IGNOU accordingly intimated the School of Nursing at Safdarjung Hospital also of the inspection but INC for reasons best known to it did not carry out the inspection; that in June 2000, INC again gave a blanket approval to IGNOU to run the programme without setting out therein any list of approved study centres. It is pleaded that in the circumstances IGNOU had no cause, reason or justification to assume that its study centre at Safdarjung Hospital was not approved by INC and the letter dated 4th August, 2010 (supra)

of INC came as a bolt from the blue to IGNOU also - that prior thereto INC had never intimated to IGNOU that its study centre at Safdarjung Hospital was not recognized. It is also informed that besides the study centre at Safdarjung Hospital, IGNOU has 50 other study centres for Post Basic B.Sc. Nursing Programme and no approval with respect to other centres also had been given. IGNOU further pleads that the study centres having been independently approved by INC and State Nursing Council, are not required to be inspected again for the purposes of recognition as aforesaid. IGNOU thus supports the case of the petitioners.

4. INC in its counter affidavit, with reference to the provisions of the Indian Nursing Council Act, 1947 has pleaded that INC has been set up not only to grant recognition of qualifications but also to decide the suitability of individual institutions to impart training for awarding the said recognized qualifications. It is pleaded that IGNOU has a dual role of an authority conferring Degrees and of running its own course; that since IGNOU was to run the Post Basic B.Sc. Nursing Programme all across the country, separate approval/suitability from INC of each study centre was vital. It is pleaded that no approval was granted to Safdarjung Hospital at the relevant time when the petitioners pursued Post Basic B.Sc. Nursing Programme therefrom. It is informed that at that time Safdarjung Hospital was having only a School of Nursing and was not eligible to conduct graduation classes in nursing; that only 18 centres of IGNOU were inspected and approved. With respect to the RAK College of Nursing, it is explained that the students thereof were pursuing their studies from RAK College of Nursing and doing only their clinical studies from Safdarjung Hospital. It is further stated that its Secretary who was stated by IGNOU to be a part of its study centre in Safdarjung Hospital in the year 2005 did not seek any permission from INC and was not expected to join the faculty of IGNOU without prior permission. It is further contended that if the contentions of IGNOU were to be accepted, it would lead to all study centres of IGNOU whether they have proper teaching, clinical and infrastructural facilities or not being competent to impart education and award Degrees and which it is contended cannot be permitted.

5. From the additional documents filed by IGNOU it transpires that INC only in November, 2006 directed IGNOU to have its study centres inspected and demanded fee therefore .

6. The counsels for the petitioners and the counsel for IGNOU in their respective submissions reiterated the aforesaid pleadings. The learned ASG appearing for INC also relied on the judgment dated 19th December, 2007 of the Division Bench of High Court of Punjab and Haryana in C.W.P. 17254/2007 titled Shiv Shakti Educational Society v. State of Punjab. The ASG has also contended that it was always understood by IGNOU that its study centres were required to be approved by INC and as and when IGNOU paid fee for inspection of the study centres, the same were inspected. Reference is also made to Sections 10(2), 11, 12 and 13 of the INC Act to contend that it is the obligatory function of INC to

adjudge the suitability of the institution imparting education. The counsel for IGNOU in his rejoinder has sought to distinguish the judgment of the Division Bench of the Punjab and Haryana High Court by contending that in the present case there is prior approval of INC to the Degree of IGNOU and without requiring approval of the study centres. The senior counsel subsequently appearing for IGNOU has also argued that IGNOU has been established under a Central enactment viz. IGNOU Act, 1985, is the largest University in the world and the Degree is granted by the University and not by the individual study centre. It is further urged that INC was always aware of the Safdarjung Hospital being a study centre of IGNOU and never objected to the same.

7. In the facts of the present case I do not feel the need to go into the larger question of whether the recognition granted by INC to IGNOU without specifying any study centre required approval of each of the study centre or not. Nor is it deemed necessary to consider the larger relief claimed of grant of approval of Post Basic B.Sc. Nursing Course of IGNOU with study centre at Safdarjung Hospital. The matter has been considered qua the two petitioners only. On the facts and documents it is clearly established that in the recognition granted to IGNOU and/or in any of the correspondence/documents of the corresponding time there is nothing to indicate that approval of study centre was to be taken. Though the question of inspection did come up in the year 1999 after the grant of recognition in 1997 but admittedly no inspection of any of the study centre was carried out. The recognition certificate without any such limitation was issued in June, 2000. The question of inspection was thereafter raised only in November, 2006 and by which time the petitioners had already joined the course/programme with the study centre at Safdarjung Hospital.

8. It thus appears that IGNOU was under a bona fide belief that it was not required to obtain any approval for each of its study centres. IGNOU continued to admit students to the said course/programme with study centre at Safdarjung Hospital representing that upon successful completion of the course/programme Degree recognized by INC will be awarded. INC also did not take any steps to disturb the said position. The petitioners thus joined the said course with the hope of enhancing their qualifications and prospects in life. It also cannot be forgotten that IGNOU is not a private enterprise which can be said to be lured by profit or other considerations into deceiving or admitting students. The question which thus arises is as to whether in these circumstances the petitioners should be granted relief or not. Finding the facts and circumstances loaded in favour of the petitioners, at one time the learned ASG was asked to take instructions on whether, even if the stand of INC was correct, an exception could be made in favour of the petitioners. The INC, of course, bound by its Statutes, Rules and Regulations could not give any such consent.

9. However, this Court finds equity heavily loaded in favour of the petitioners. The petitioners belong to the nursing profession which is an arduous and a noble profession. It is not merely an occupation to earn a living but a benevolent

service. Nursing of the sick, said Florence Nightingale is a vocation as well as a profession. Nurses live in the midst of distressing atmosphere and the Tribunals/ Courts cannot shut their minds to the said reality while dealing with the issues relating to the nursing profession. They have toiled for three years to obtain qualification of Post Basic Graduation in Nursing and now are desirous of having post graduation. Safdarjung Hospital wherefrom the petitioners have done their graduation is also a large premier government hospital with thousands of patients everyday and with most eminent persons in its faculty. No particular fact has come on record to show that the study centre of IGNOU at Safdarjung Hospital even if having no formal approval, was not equipped to impart the necessary education/training to the petitioners. Nursing is a profession with much more emphasis on practice and experience than on theory. I find it hard to believe that the petitioners in their three years graduation course at study centre in Safdarjung Hospital would not have imbibed the necessary practical experience and education for graduation in nursing. Even otherwise, the examination for conferring the Degree is held by the University. According to INC also some of the study centres of IGNOU and the Degree in B.Sc. Nursing of IGNOU were approved. The examination held by IGNOU for students of the approved and unapproved study centres was the same. The very fact that the petitioners have cleared the said examination shows that the petitioners did not lack in any theoretical knowledge also of the subject. The Supreme Court in *Laxmi Sharma and Others Vs. V.C., Chhatrapati Sahuji Maharaj University and Others*, in a somewhat similar situation and where there was only an expectation in the mind of the college authorities that permanent affiliation would be granted to the college and which had also encouraged students to take admission in the hope of being granted affiliation allowed the students to take examinations even in the absence of affiliation. Even though the judgment is not to be treated as a precedent but I find the facts of the present case to be on a much higher pedestal. Here, there was a belief as distinct from an expectation that the Course and the Degree are recognized.

10. The Supreme Court in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, reiterated that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs but to enable the High Courts to reach injustice wherever it is found and to mould the relief to meet the peculiar and complicated requirements of this country. Similarly in *B.C. Chaturvedi Vs. Union of India and others*, it was held that the mere fact that there is no provision parallel to Article 142 relating to the High Courts can be no ground to hold that the High Courts have not to do complete justice and if moulding of relief would do complete justice between the parties the same cannot be ordered. To the same effect are the judgments in *Food Corporation of India Vs. S.N. Nagarkar*, and *Employees State Insurance Corporation and Others Vs. Jardine Henderson Staff Association and Others*, . Mention may also be made of *A. Sudha Vs. University of Mysore and Another*, where even though the

candidate was held ineligible for admission to MBBS Course but finding the candidate to have been justified in relying upon the information supplied by the Principal of the Institute and holding that in these circumstances the student ought not to be penalized, was allowed to continue pursuing the MBBS Course.

11. The petition is therefore allowed to the aforesaid extent. The respondent No. 2 INC is directed to within 10 days hereof issue the requisite NOC to the petitioners to enable the petitioners to gain admission for M.Sc. Nursing. Though the NOC for the reasons aforesaid could not be submitted by the petitioners within the time directed by the respondent No. 4 but the respondent No. 4 has been represented before this Court and has not raised any objection. The respondent No. 4 is directed to admit the petitioners to M.Sc. Nursing Course in the current academic year. It is however clarified that nothing contained in this order shall tantamount to this Court holding that the approval as contended by INC to be necessary of study centres of IGNOU is not so necessary or entitle any other student of the said study centre to any benefit from INC the relief to the petitioners having been granted in the peculiar facts aforesaid. The petition is disposed of. No order as to costs.