
(2015) 01 RAJ CK 0146
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1136/2015

R.R. College of Nursing

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 RAJ CK 0146

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : R.N. Mathur, Senior Advocate and Punit Singhvi, for the Appellant;
S.K. Gupta, Learned A.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This petition has been filed impugning the order dated 28.8.2014 issued under the hand of Joint Secretary, Medical and Health (Group-3) Department, Government of Rajasthan, Jaipur directing that the students be not allocated inter-alia to the petitioner college till further orders for reason of it being under investigation by the Anti Corruption Bureau (hereinafter "the ACB") for criminal culpability in obtaining recognition from the Indian Nursing Council (hereinafter "the INC").

2. Before addressing on the merits of the writ petition it would be in place to record that earlier writ petition No. 9333/2014 was filed before this Court by the petitioner College challenging the order dated 28.8.2014 (as under challenge herein) and praying for the same relief. On the petitioner's earlier petition (SBCW P. No. 9333/2014) being listed before this Court with connected matters, this Court hearing the matter at the relevant time directed constitution of a Committee comprised of an Advocate of this Court Shri Rishabh Khandelwal and Shri Radhey Shyam Sethi, Joint Director, Medical and Health Department to make inspection of various institutions then before the Court and submit a report with regard to their being compliant or not with the INC norms/guidelines for grant of

recognition to B.Sc. Nursing Courses. A report was there-upon filed before this Court on 31.10.2014 inter-alia qua the petitioner College. Objections to the said report were filed. However on the matter coming up before this Court on 4.12.2014 counsel appearing for the petitioner College prayed for withdrawal of the writ petition with liberty to file afresh if the occasion so arose. The writ petition was therefore dismissed as withdrawn with liberty as prayed for.

3. The present writ petition purports to have been filed in terms of the liberty granted by this Court. It has been stated that since the withdrawal of SBCW P. No. 9333/2014 on 4.12.2014, there has been change in circumstances which warrants a re-look as the case of the petitioner College for setting aside the order dated 28.8.2014 issued under the hand of Joint Secretary, Medical and Health (Group-3) Department, Government of Rajasthan, Jaipur. The change Sr. Counsel Shri R.N. Mathur submitted is that, for one, of the 8 institutions to which the order dated 28.8.2014 pertains, six institutions have the benefit of interim orders passed at the Principal Seat of this Court at Jodhpur such as in SBCW P. Nos. 597/2015 and 9013/2014 where-under the institutions to which allocation of students was prohibited by the State Government have been allowed to admit students into B.Sc. (Nursing) Course as the order dated 28.8.2014 qua such institutions has been stayed. Sr. Counsel submitted that aside of everything else the petitioner College in the circumstances is entitled to similar interim protection as granted by the Principal Seat at Jodhpur to other Colleges similarly situate for reasons of the comity of courts and parity even qua interim orders. Sr. Counsel submitted that it is well settled that mere pendency of a criminal investigation cannot be prejudicial to the rights of a citizen/organisation and until one is held to be guilty no disability can attach. It is further submitted that in the investigation into the F.I.R. against the petitioner College, the I.O. has recommended filing of a closure report finding no wrong doing/criminal culpability as alleged and hence the petitioner College has a prima facie case which undercuts the suspicion and allegations which resulted in the passing of the impugned order dated 28.8.2014. Sr. Counsel further submitted that the Indian Nursing Council Act is a regulatory statute and the petitioner College is ready and willing to rectify the short-comings in compliance with the guidelines/para-meters for recognition of B.Sc. (Nursing) Course as found by the Committee constituted by this Court in SBCW P. No. 9333/2014 within a time frame of two months. It is submitted that the order dated 28.8.2014 is thus liable to be quashed and set aside and the petitioner College with subsisting recognition of its B.Sc. (Nursing) Course from INC and affiliation to RUHS should be allowed to admit students into B.Sc. (Nursing) Course 2014-15 as per the approved induction capacity.

4. Mr. S.K. Gupta-learned A.A.G. appearing for the State and Mr. Ashish Kumar Singh counsel appearing for the respondent RUHS have submitted that there has been no substantial change in the circumstances after withdrawal of the earlier writ petition (No. 9333/2014 on 4.12.2014) by the petitioner College nor a fresh cause of action accrued to the petitioner College. It has been submitted that this

Court while granting liberty to the petitioner to file a fresh writ petition had categorically stated that such a petition could be filed if the occasion so arose. It has been submitted that the purport of the aforesaid order was that the petitioner College could approach this Court in the event of fresh cause of action arising such as by way of a representation filed against the order dated 28.8.2014 to the State being dismissed. Counsel have further submitted that as the petitioner College has approached this Court on the ground of parity with those allegedly similarly situate, it was for it to show that the Principal Seat at Jodhpur while passing the orders in SBCW P. No. 597/2015 on 14.1.2015 was made aware of the earlier proceedings taken before this Court by the aforesaid institutions where-upon a committee of an Advocate of this Court as also Joint Director of the Medical and Health Department had been constituted for inspection of the Colleges/institutions for ascertaining facts with regard to their compliance with the para-meters and standards/guidelines of the INC for grant of recognition for B.Sc. (Nursing) Course/s. It has been submitted that the issue of parity can only be agitated if the underlying facts are identical and absent identical facts, the ground of parity or for that matter the principle of comity of the Court/s in passing the interim order/s cannot be pressed. It has been submitted that the assertion of the Sr. counsel for the petitioner that the proposal of the I.O. for filing a negative report in the pending F.I.R. against the petitioner College is conclusive and equivalent to filing of a negative report on allegation of offences is not the correct statement of law. Counsel submits that the Investigating Officer in crime No. 85/2013 (ACB) against the petitioner College has indeed recommended filing of a negative report against the petitioner College but the said recommendation on the face of it is subject to legal opinion and confirmation by the higher authorities at the Police Headquarter. It has been submitted that the Code of Criminal Procedure does not contemplate an interim negative report and the only report of relevance is the final report whether negative or positive as filed in Court. Learned A.A.G. has submitted that in this view of the matter it is presumptive on the part of the petitioner College that it has been absolved for all its doing in the alleged fraudulent obtaining of recognition by the INC in the year 2007-08. It has been further submitted that this Court should also take into consideration the fact that the State Government's NOC for running of B.Sc. (Nursing) Course in the State of Rajasthan is central to the enterprise and where the State Government has for a reasonable and valid reason, such as pending investigations and serious allegations against the petitioner College, decided to keep the NOC in abeyance and restrained the induction of students in B.Sc. Nursing Part-I Course run by the petitioner College, this Court in the exercise of its extra-ordinary equitable jurisdiction should not intervene even if a legal ground is made out-more so if the consequences of intervention would be revival of a course, recognition whereof was prima-facie fraudulently obtained in collusion with the officers of the INC despite absence of the requisite infrastructure and satisfaction of para-meters as detailed in the INC's own guidelines for grant of recognition. This fact, learned A.A.G. submitted transpires from the report of the Committee appointed

by this Court following an inspection.

5. Mr. Ashish Kumar Singh counsel appearing for the respondent RUHS submits that the standard of proof in a criminal case as in crime No. 85/2013 being investigated by the ACB on the one hand and keeping in abeyance the NOC by the State Government by restraining the induction of students into the petitioner College B.Sc. Nursing Part-I on the other, are totally different aspects of the matter. It has been submitted that the inspection report of the Committee appointed by this Court in SBCW P. No. 9333/2013 ex-facie establishes that the petitioner College is even now deficient in requisite minimum infrastructure required by the INC under its own guidelines-what of when the INC's own inspection now under a cloud, was carried out about 7 years ago for grant of recognition to the petitioner College.

6. Heard counsel for the parties and perused the writ petition.

7. The jurisdiction of this Court under Article 226 of the Constitution of India being equitable and extra ordinary cannot be exercised as a matter of course. Equitable considerations and consequences of the Court's intervention are extremely relevant. This Court is to ensure that its intervention does not revive the underlying illegality. In the instant case the petitioner College amongst others is under investigation by the ACB for having allegedly fraudulently obtained recognition from INC for its B.Sc. Nursing Course in collusion with the Officers of the INC. The investigation into the said F.I.R. is pending albeit presently it appears that the Investigating Officer has made a recommendation for filing of a negative report. But admittedly that is not final as the same has yet to be put through legal evaluation and affirmation of the recommendations by the higher officers at the Police Headquarters. The allegations against the petitioner College as also others are very serious as they pertain to the field of education and more so are related to medical services in the Country. Aside of the investigation against the petitioner College, this Court in SBCW P. No. 9333/2014 conscious of the importance of the matter had appointed a Joint Committee of an Advocate of this Court and the Joint Director, Medical and Health Department. The said joint Committee inspected the petitioner College and also had the physical assets obtaining at site video graphed. The report of the Committee was filed on or about 31.10.2014 before the Court. A perusal of the aforesaid report in SBCW P. No. 9333/2014 which was called for indicates that the petitioner College does not have the requisite record room and sick room as mandated under the Indian Nursing Council Guidelines. Nor does it own the hostel premises albeit warranted by the obtaining guidelines of the INC as a condition for recognition for the B.Sc. (Nursing) Course. The Committee also found that there was no separate hostel available for the Faculty as was necessary under the Regulations of the INC. And the multi-purpose hall also a requirement under the guidelines of INC was under construction albeit it is now stated by Sr. Counsel for the petitioner to be complete. The Committee most importantly also found that the petitioner College did not satisfy the essential

requirement of 100 bedded parent hospital for clinical facility. The hospital was found to be in the individual name of the Executive Member of a Society and not owned by the Society running the petitioner College. This Court cannot overlook the aforesaid deficiencies.

8. I find no force in the submission of the learned Sr. Counsel appearing for the petitioner that the INC guidelines of 2012 for minimum requirements for establishing a school of nursing, on the basis of which inspection was carried out by the Committee appointed by this Court, did not apply to the petitioner College as the petitioner College had been first recognized in the year 2007-08. There cannot be two standards for running of Nursing schools; one for nursing Colleges established before 2012 and those newly established nursing schools after 2012. I am of the considered opinion that with the publication of INC guidelines and minimum requirement to establish schools of nursing in the year 2012, they applied with equal force to all nursing schools old and new and were relevant to all recognitions granted/continued for the year 2013-14, 2014-15 onwards.

9. As far as the question of parity with the other Colleges in the impugned order dated 28.8.2014 is concerned, who are stated to be under protection of the interim orders of the Principal Seat at Jodhpur is concerned, the learned A.A.G. is correct in submitting that parity can only with reference to situations similar in nature. It is indeed true that there is nothing on record to establish that while passing the interim order dated 14.1.2015 in SBCW P. No. 597/2015 the Coordinate Bench at the Principal Seat at Jodhpur was informed of similarly placed Colleges having approached this Court challenging the same order dated 28.8.2014, this Court there-upon appointing a Committee to carry out inspection of the assets of the College/s for determination of the question as to whether they were indeed compliant with the requirement/guidelines for grant of recognition to nursing schools by INC. Besides this Court is not considering the grant of any relief but in-stead disposing of the writ petition. The interim order dated 14.1.1995 passed by the Principal Seat at Jodhpur in SBCW P. No. 597/2015 is therefore not a binding precedent.

10. Further this Court in SBCW P. No. 11074/2012 and 18 matters decided on 18.11.2013 while dealing with situations of criminal investigation by the ACB against various institutes which had allegedly fraudulently obtained affiliation from National Council of Vocational Training (hereinafter "the NCVT") had held that "if ACB has registered cases against certain institutions on allegation of gross irregularities having complicity with the officials of the NCVT or Directorate of Technical Education, this Court in the face of such irregularities cannot direct that they be yet provided recognition or allocated students." Thereupon the Court proceeded to issue directions for expedited conclusions of the investigation into the F.I.Rs. with regard to fraudulently obtaining of affiliation from NCVT and held that the right of the concerned institutions would be dependent upon the outcome of the investigation qua each institution. Similarly, this Court in its order dated 16.1.2015 passed in SBCW P. No. 9333/2014 has observed that from

similar matters which came up before the Court and also public knowledge from news reports it appeared that several recognized nursing institutes in the State of Rajasthan were not compliant with the norms and para-meters of the INC/RNC and even with the conditions of affiliation by the RUHS. And therefore nursing education in the State of Rajasthan needed urgent corrective action in public interest. Consequently it was directed that four Members Committee/s constituted of stakeholders inspect nursing institutes against whom F.I.Rs. had been lodged to ascertain as to whether they were/are in-fact compliant with the extant norms of the INC/RNC for grant of recognition for running/conducting various nursing courses for which they had indeed obtained recognition from INC and RNC as also affiliation with Rajasthan University of Health Sciences (where applicable) through questionable means.

11. It is thus apparent that the public interest which arises in the matter is of extreme relevance. That cannot be compromised or in any manner diluted only with emphasis on the rights of the petitioner College to induct students into B.Sc. Nursing Part-I course merely on the strength of recognition therefore by the INC/RNC overlooking a negative report of the Committee constituted by this Court in SBCW P. No. 9333/2014 which has found the petitioner College deficient on substantial matters qua INC's norms for recognition of B.Sc. (Nursing) Course. This Court does not exist in vacuum and has to take into consideration the overall factual environment with regard to a matter before it as observed in SBCW Mp/178/2015.

12. I am also of the considered view that the liberty granted to the petitioner College in SBCW P. No. 9333/2014 which was withdrawn, was not unconditional and it was only in the event if the occasion arose. The purport of the order was that the petitioner College could approach this Court afresh on a fresh cause of action. Permission to withdraw the writ petition only to approach this Court again without any fresh cause of action would have been an exercise in redundancy. In my considered opinion neither the interim order dated 14.1.2015 passed by the Principal Seat at Jodhpur in SBCW P. No. 597/2015 nor the interim recommendations of the Investigating Officer for a final report (negative) in crime No. 85/2013 against the petitioner College supplies a fresh cause of action for the filing instant petition.

13. I therefore find no force in the petition. Accordingly dismissed.