

(2019) 05 RAJ CK 0115

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5542, 7575 Of 2018

Shishu Niketan Prathmik Pathshala Samiti And Ors

APPELLANT

Vs

Indian Nursing Council And Ors

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Indian Nursing Council Act, 1947 — Section 13, 14, 15

Citation : (2019) 05 RAJ CK 0115

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : B.S. Sandhu, M.S. Champawat, Yashpal Khileree, Hemant Jain, Vandhana Bhansali

Final Decision : Allowed

Judgement

Petitioner-Society which is registered under the Rajasthan Societies Registration Act, 1958, has preferred these writ petitions praying therein undermentioned reliefs:-

In S.B. Civil Writ Petition No.7575/2018

"1. The respondents may kindly be directed to issue admit card to the students of the college run by the petitioner-Society for GNM (3 Year Course) First Year examination (New Syllabus) for the academic session 2016-17, and to permit them to appear in the examination which are to be held in the month of June, 2018.

2. Any other appropriate order or direction, which this Hon'ble Court deems fit and proper, may kindly be passed in favour of the petitioner.

3. Cost of the writ petition may kindly be awarded to the petitioner."

In S.B. Civil Writ Petition No.5542/2018

"1. The petitioner may be permitted to undertake GNM course for the Session

2017-18 with intake of 30 students and the name of the petitioner may be included in the second and subsequent round of counselling and students may be allotted to the petitioner.

2. A declaration may be issue that INC has got no role to play as far as grant of recognition is concerned post grant issued on the first occasion for undertaking the GNM course.

3. Any other appropriate order or direction, which this Hon'ble Court deems fit and proper, may kindly be passed in favour of the petitioner.

4. Cost of the writ petition may kindly be awarded to the petitioner."

It is, inter-alia, averred in the petitions that the petitioner-Society is running a nursing institute in the name and style of Marudhar School of Nursing, situated at Suratgarh.

At the threshold, the institute started with General Nursing & Midwifery Course (for short, 'GNM') by establishing Marudhar College of Nursing. Later on, an endeavour was made by the petitioner-Society to seek NOC from the State Government for running nursing school. The State Government granted NOC to the petitioner-Society to commence GNM course with the capacity of 30 students. Subsequent to that, petitioner-Society submitted an application before the Indian Nursing Council (for short, 'INC') and thereupon INC approved the institution with the intake capacity of 30 students vide its letter dated 20.06.2006, followed by yet another communication dated 07.07.2006. The NOC granted by the State as well as INC remained in vogue for the years 2013-2014, 2014-2015 & 2015-2016. It so happened that in the year 2017, vide communication dated 23.10.2017, the Society was informed about certain deficiencies as per inspection carried out on 11/12th September, 2017 and the petitioner-Society was asked to make good the deficiencies. Pursuant thereto, petitioner-Society submitted compliance report vide its letter dated 02.11.2017, duly accompanied with demand draft of Rs.15,000/- for re-inspection.

Without acknowledging the communication of the petitioner-Society dated 02.11.2017, a letter dated 04.01.2018 was addressed to it to apply online for re-inspection and further asked to submit demand draft of Rs.50,000/- towards re-inspection fee. It was further informed to the Society that as of now its application cannot be considered and the demand draft too was returned back in original to apply online. As per version of the petitioner, the fee demanded for re-inspection was exorbitant and in fact fee for re-inspection is Rs.15,000/- only. Subsequently, the petitioner made attempts from time to time to submit online form but the link of INC website was either not available or not opening. It is in that background, petitioner-Society sent a letter on 16.05.2018 to INC seeking guidelines in the matter. To substantiate this assertion, the petitioner-Society also enclosed screen-shot of INC website.

That apart, the petitioner-Society has also taken shelter of a judgment rendered

by Karnataka High Court dated 24.07.2017, dilating on the role of INC in the matter of grant of recognition/approval for running nursing course as long as recognition granted by State Council is not withdrawn. In the matter of grant of recognition to institutions imparting nursing courses, such as ANM, GNM etc., the Karnataka High Court by the aforesaid judgment has held that recognition of INC is not required so long as recognition granted by State Council and concerned University is not withdrawn. Petitioner-Society has also made endeavor to highlight a fact that State Government has already recognized the institution for running GNM course and further the name of institution is also available on the website of Rajasthan Nursing Council. The grievance of the petitioner is that despite status of the College run by it as a recognized institution, it's name was not included for allotment of students in GNM courses when the counselling commenced.

Being aggrieved by the same, petitioner-Society at the threshold filed writ petition before this Court bearing No.5542/2018. The Court, at the threshold, while issuing notices passed interim order on 09.05.2018, directing the respondents to provisionally allot students to the College run by petitioner-Society in the second counselling to be held for admission to GNM courses. Later on, by letter dated 07.03.2018, issued by Rajasthan Nursing Council, the concerned nursing institute, which is running under the auspices of the petitioner-Society was directed to submit examination forms of the students, who were to appear for GNM 1st year (new syllabus), mains examination for the Academic Year 2016-2017. The dates for submission was further extended upto 22.03.2018.

At the behest of College, a list of 30 eligible students to take up main examination of GNM (new syllabus) along with demand draft of Rs.15,000/- for said purpose was submitted. Subsequently, on 01.04.2018, the College was verbally informed about deficiency in the examination forms and in response thereto the College furnished requisite documents to make good the deficiencies on 03.04.2018. The whole endeavor of the petitioner is that despite completing all these formalities and availability of NOC of the State Government as well as RNC, the students who were pursuing their GNM courses with the College were not issued admit cards for 1st year main examination. When the petitioner-Society inquired for this sort of omission, then it was revealed that said action was taken by RNC, in adherence of certain instructions issued by the INC.

As a matter of fact, Indian Nursing Council objected to issuance of admit card and permitting students to take up examination by citing the reason that no NOC, as such, is granted by the apex body. Faced with this situation, the petitioner-Society again approached this Court and at the threshold, the Court, on 29.05.2018, after hearing learned counsel issued notices to the respondents and passed following interim order:-

"Meanwhile, the petitioner-Institute is allowed to undertake the examination of GNM First Year Course commencing in June, 2018. However, it is clarified that

neither the students nor the petitioner-Institute will claim equity on the basis of the said interim order. The result will not be declared without prior permission of the Court."

In adherence of the interim order, all the students were allowed to participate provisionally in 1st year GNM course but their results were not declared. In that background, on 01.05.2019, counsel representing RNC was directed to bring result of the students in sealed envelope and the result was submitted before the Court on 02.05.2019 in a sealed envelope.

While joining issue with the petitioner-Society, by and large, the State and RNC have supported the cause of petitioner-Society.

However, the INC has contested petition by filing its counter affidavit. In its counter affidavit, respondent INC has pleaded that being apex body, it is the prerogative and repository of the council to regulate the nursing profession throughout the Country and set uniform standards of training for nurses, mid-wives and health visitors. It is also averred in the counter affidavit that INC has issued guidelines from time to time directing nursing institutes to ensure that requisite training, clinical and infrastructural facilities are maintained by them, at all times, in adherence of the guidelines.

It is also stated in the affidavit that INC is authorized to grant suitability certificate to a nursing institute and so far as the College run under the auspices of the petitioner-Society is concerned, NOC has not been granted by the INC. For substantiating its defence and to thwart the writ petition of the petitioner-Society, INC has also taken shelter of Sections 13 to 15 of the Indian Nursing Council Act, 1947.

While arguing the matter, learned counsel for the petitioner submits that the issue involved in present petitions are squarely covered by a decision rendered by this Court in S.B. Civil Writ Petition No.15233/2016 & other connected petitions, decided on 18.12.2017. As per submission of learned counsel, while deciding all these petitions, learned Single Judge of this Court relied on the judgment of Karnataka High Court, referred to supra. Learned counsel has also contended that the said judgment is also followed by this Court in some other subsequent petitions. It is also urged by learned counsel that while deciding the bunch of writ petitions by order dated 18.12.2017, the learned Single Judge of this Court also relied on the Division Bench judgment of Bombay High Court, Aurangabad Bench. The Court, finally issued following directions:-

"In view of the above admitted position, all the above mentioned writ petitions are allowed. The petitioner institutions are not required to obtain recognition from the Indian Nursing Council as the Indian Nursing Council has no authority to grant recognition to the institutions imparting nursing training such as Auxiliary Nurse and Midwife Course (ANM), General Nursing and Midwifery (GNM), Bachelor of Nursing (B.Sc.), Post Basic Bachelor of Nursing (P.B.B.Sc.) and Master of Nursing (M.Sc.).

However, it is clarified that the admission of such students who were admitted in pursuance to the interim orders of this Court on various occasions shall be regularized and they shall be allowed to take their examinations in case, they are otherwise eligible."

Per contra, learned counsel for INC has persisted with the objections raised in its reply - counter-affidavit. It is also argued by Mr. Khileree that against judgment and order dated 18.12.2017 intra-court appeal of INC is pending.

I have bestowed consideration to the arguments advanced and perused the material available on record.

Substantially, the lis involved in both these petitions is squarely covered by judgment and order dated 18th of December, 2017, passed by the Co-ordinate Bench. Mere pendency of intra-court appeal against the aforesaid judgment and order cannot obliterate the same. Moreover, learned counsel for INC has also not placed on record any interim order passed by Division Bench staying operation of order dated 18th of December, 2017. Thus, in my opinion, both these petitions merit disposal by relying on judgment and order of Co-ordinate Bench.

In this view of the matter, the instant petitions are also allowed in above terms and the respondents are directed to declare results of the students, pursuing their GNM course with the institution of petitioner-Society, namely Marudhar School of Nursing, Suratgarh, and if any student has cleared his 1st year examination, then he/she may be permitted to take up 2nd year GNM course, and in case of unfavourable result, the respondents may take appropriate action in accordance with law.

The sealed envelope showing results of the students be returned back in original to learned counsel for RNC.