
(2018) 01 CAL CK 0117
In the Calcutta High Court
Case No : 596 of 2017?CAN 4235 of 2017

Sonali Nandi

APPELLANT

Vs

The West Bengal Nursing Council & Ors.

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Bengal Nurses Act, 1934, Section 19, Section 10(1), Section 18, Section 33(1), Section 2(c), Section 11(a), Section 19(c) -
West Bengal College of Nursing (Regulation of Admission in the B. Sc. Honours Nursing Course) Rules, 1981

Citation : (2018) 01 CAL CK 0117

Hon'ble Judges : Jyotirmay Bhattacharya, Arijit Banerjee

Bench : Division Bench

Advocate : Mukul Lahiri, Prasenjit Burman, Sovan Bera, Puja Beriwal, Sushovon Roy, Anika Moitra, Sirsanya Bandopadhyay, Subhendu Sengupta, Pratik Dhar, Ritwick Pattanayak, Somnath Mazumdar, Samir Halder, Cardina Roy

Judgement

1. The petitioner successfully completed the B.Sc. Nursing Course conducted by the West Bengal University of Health Sciences. She then applied for registration as a nurse with the West Bengal Nursing Council (in short "Council"). By a communication dated December 05, 2016, the Council rejected such application on the ground that she did not have the requisite qualification for being admitted to the said course. Being aggrieved, the petitioner approached this Court by filing WP No.1113(W) of 2017. By a judgment and order dated March 22, 2017, the learned Single Judge dismissed the writ application. Being aggrieved, the writ petitioner/appellant is before us by way of the present appeal. Submission of the Appellant:-

2. The petitioner passed the Higher Secondary Examination conducted by the West Bengal Council of Higher Secondary Education in the year 2011. She wanted to become a nurse. JENPARH is an entrance test conducted by the West Bengal Joint Entrance Examination Board for enrolment on, inter alia, the B.Sc. (Nursing) Course. The petitioner participated in JENPARH -2012 and was

successful. She got herself admitted to the College of Nursing Asia Heart Foundation which is affiliated to the West Bengal University of Health Sciences. She also got herself registered with the said university in the year 2012.

3. After having completed the first three years of the B.Sc. Nursing Course successfully, the petitioner received a communication dated 26th April, 2016 from the Asia Heart Foundation which read as follows:- "With reference to the series of discussions we had with you and the opinion obtained from the competent Authority, You are hereby notified that on account of non-compliance as per the provision of JENPARH your B.Sc. (N) course is hereby discontinued with immediate effect."

4. The reason for issuing of such communication, we are told, was the stand of the university that since the petitioner did not have pass mark in Chemistry in the Higher Secondary Examination, she was not eligible to be enrolled on the B.Sc. Nursing Course.

5. The petitioner challenged such communication by filing W.P.No.8141 of 2016. By a judgement and order dated 13th May, 2016, the impugned communication was set aside by the learned Single Judge by directing the authorities to permit the petitioner to pursue her course till its completion and to treat her as a bona fide student of the course. We are apprised that there was no appeal from the said judgment and order.

6. The petitioner successfully completed the B.Sc. Nursing Course. She then applied to the respondent-council for being registered as nurse without which she would not be able to get a job in any Hospital or Nursing Home. Her application was, however, rejected by the Council. She applied under the Right to Information Act for being informed the reasons for which her application was rejected. By a written communication dated 5th December, 2016, the Council informed her that her application was rejected for not fulfilling the criteria of Section 19(c) of the Bengal Nurses Act, 1934 (in short "the said Act") and also for not fulfilling the eligibility criteria for undergoing the B.Sc. (Hons) course as laid down by the Indian Nursing Council as well as the JENPARH Brochure.

7. Mr. Lahiri, learned senior counsel appearing for the petitioner submitted that it would appear from the order impugned before us that the Council conceded at the hearing before the learned Single Judge that section 19 of the said Act has no manner of application to the facts of the instant case. Hence, the only point that remains is whether or not the Council was justified in rejecting the petitioner's application for registration on the ground that she did not fulfill the eligibility criteria for undergoing B.Sc. Nursing Course.

8. Mr. Lahiri referred to section 18 of the said Act which provides , inter alia, that nurses, midwives and health visitors who have undergone the course of training, have passed the examinations and fulfill such further conditions as may be prescribed would be entitled to registration under the said Act on payment of prescribed fees.

9. Learned counsel submitted the no "further conditions" have been prescribed by the authorities and no rules or regulations have been framed under the said Act. It was submitted that the rules/regulations must be made in the manner prescribed i.e by issuing notification and publishing it in the official gazette and could not be made by way of an office order.

10. In this connection, Mr. Lahiri referred to the Hon''ble Supreme Court's decision in the case of Ramachandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and others reported in AIR 1975 SC 915 wherein at para 25 of the judgement, the Hon''ble Court reiterated the age old rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

11. Mr. Lahiri drew our attention to a notification dated 27th March, 1981 issued by the Department of Health and Family Welfare, Government of West Bengal whereby the West Bengal College of Nursing (Regulation of Admission in the B.Sc. (Hons) Nursing Course) Rules, 1981 were brought into force. He submitted that the said Rules do not apply to the petitioner who underwent the B.Sc. pass Nursing Course. Learned counsel then submitted that as per the JENPARH Brochure, the eligibility criteria of a candidate who wanted to pursue the B.Sc. Nursing Course was to have passed the Higher Secondary Examination with 50 % marks in the subjects Physics, Chemistry, Biology and English taken together with pass marks in each subject individually. He drew our attention to the petitioner's Higher Secondary Examination Mark-sheet and submitted that the petitioner fulfilled such criteria. However, the petitioner did not have pass mark in the Chemistry theoretical paper having obtained 17 out of 80, but taking the theoretical and practical papers together (in practical she obtained 17 out of 20), she secured 34 marks out of 100 and thus had pass marks. Learned counsel submitted that there was no requirement in the JENPARH Brochure that a candidate had to have pass mark separately in theoretical and practical papers of a subject. Hence, the petitioner satisfied the eligibility criteria. Learned counsel submitted that the petitioner is eligible to be registered as nurse with the Council as she satisfies the criteria laid down in section 18 of the said Act.

12. Mr. Lahiri also relied on an Apex Court decision in the case of B. S. Minhasvs.- Indian Statistical Institute, (1983) 4 SCC 582, in support of the proposition that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

13. As regards absence of rules under the Bengal Nursing Act, Mr. Lahiri submitted that the rules or the absence of it do not detract from the substantive power conferred by a statute. In this connection he relied on the decision of the Hon''ble Apex Court in the case of Khargram Panchayat Samiti-vs.-State of West Bengal, (1987) 3 SCC 82. Submission of the Council:-

14. Mr. Pratik Dhar, learned senior counsel appearing for the respondent-Council

referred to the West Bengal Council of Higher Secondary Education (Examination) Regulations, 2006 and in particular to Regulation 20(4) thereof, the first proviso whereof is to the effect that if the examination on any subject consists of theoretical paper and practical paper or project work thereon, the candidate shall, in order to be declared pass in the subject, have to score thirty per cent marks in theoretical paper and practical paper or project work thereon separately. He submitted that the petitioner did not have 30 per cent mark in Chemistry theoretical paper and therefore, could not have been declared pass in Chemistry.

15. Learned counsel then referred to the judgement in the earlier writ petition adverted to hereinabove and submitted that there is a finding therein that the petitioner should not have been admitted on the B.Sc. Nursing Course. There is no challenge to such finding.

16. Mr. Dhar then relied on the decision of the Hon"ble Supreme Court in the case of Archana Girish Sabnis vs. Bar Council of India and Others reported in 2015 (4) SCC 498. The Learned Single Judge also relied heavily on the said decision of the Hon"ble Apex Court in the judgment and order impugned before us and we shall revert back to this decision later in this judgment.

17. Mr. Dhar further submitted that the 1981 Rules regarding regulation of admission to the B.Sc. (Hons) Nursing Course, would apply to the petitioner. Presently there is no B. Sc. (Hons) Nursing Course. He drew our attention to the memo dated 22nd June, 2010 issued by the Registrar of West Bengal University of Health Sciences to the Director of Joint Entrance Examination Board, West Bengal to the effect that the B.Sc.(Hons) Nursing Course would be renamed as basic B.Sc. Nursing Course. He referred to rule 9 of the 1981 Rules which prescribes the minimum educational qualification of a candidate aspiring to do the B.Sc. Nursing Course and submitted that the petitioner did not have the requisite qualification for undergoing the said course.

18. Mr. Dhar then submitted that the Parliament enacted the Indian Nursing Council act, 1947 with the object of constituting an Indian Nursing Council in order to establish a uniform standard of training for nurses, midwives and health visitors. He referred to Sec. 10(1) of the said Act which provides that for the purpose of the said Act, the qualifications included in Part I of the Schedule shall be recognized qualifications and the qualifications included in Part II of the Schedule shall be recognized higher qualifications. He also referred to Sec. 11(a) of the said Act which provides that any recognized qualification shall be a sufficient qualification for enrollment on any State register. This includes a general nursing certificate issued by the West Bengal Nursing Council. He submitted that minimum academic qualifications are required of all candidates aspiring to become professional nurses. If without such qualification a candidate is registered as a nurse by the Council, the general standard of nursing would be compromised. The appellant did not obtain pass mark in the theory paper in Chemistry and hence is not eligible to be registered as a nurse.

19. Learned Counsel then submitted that Sec. 33(1) of The Bengal Nurses Act, 1934 empowers the State Government to make rules to carry out the purposes of the said Act. In exercise of such power the State Government has framed the West Bengal College of Nursing (Regulation of Admission in the B. Sc. Honours Nursing Course) Rules, 1981. Going by the said rules, the appellant was not entitled to be enrolled on the nursing course that she undertook.

20. Mr. Dhar relied on the Apex Court decision in *Surinder Singh-vs.-Central Government*, (1986) 4 SCC 667, for the proposition that where a statute confers power on an authority to do certain acts or exercise power in respect of certain matters subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. Framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" means, in accordance with rules, if any. If rules are framed, the powers so conferred on the authority should be exercised in accordance with the rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. For the same proposition, learned Counsel relied on the decisions of the Hon'ble Apex Court in the case of *Orissa State (Prevention & Control of Pollution) Board-vs.-Orient Paper Mills*, (2003) 10 SCC 421 and in the case of *Jantia Hill Truck Owners Association-vs.-Shailang Area Coal Dealer and Truck Owner Association*, (2009) 8 SCC 492. Learned Counsel also referred to the decision of the Hon'ble Apex Court in *Bar Council of India-vs.-Aparna Basu Mallick*, (1994) 2 SCC 102. This decision, in our opinion, has no relevance to the facts of the instant case. Court's View:-

21. We have given anxious consideration to the rival contentions of the parties.

22. Undisputedly the appellant passed the higher secondary examination. Her compulsory papers were Bengali and English in both of which she obtained Grade-A (very good). Her compulsory elective languages were Biology (Grade A), Mathematics (Grade C=qualified) and Physics (Grade B=fair). In the compulsory paper of Environmental studies she obtained Grade A+ (excellent). In the optional elective subject of Chemistry, the mark sheet shows the remark "NA" under the column "Subject Grade". NA (not applicable) is shown against the subject grade when a candidate is absent or does not obtain minimum pass marks in either theoretical or practical/project/oral. The appellant obtained pass marks in the Chemistry practical paper (17 out of 20) but did not obtain pass mark in the Chemistry theoretical paper (17 out of 80). The mark against the Chemistry theoretical paper is shown as 17/D, where D stands for disqualified. However, taking practical and theory papers together the appellant obtained pass mark (34 out of 100). Hence, taking Chemistry subject as a whole the appellant passed. Otherwise, in the subject grade column, against Chemistry, the remark would have been D i.e. disqualified.

23. The eligibility criteria of a candidate for getting enrolled on the B. Sc. Nursing

course as indicated in the information brochure published by the West Bengal Joint Entrance Examination Board for JENPARH-2012 was as follows:- "B.Sc. Nursing: Only female candidates having passed/appeared/due to appear in the year 2012 at the Higher Secondary Examination (10+2) or equivalent examination recognized by West Bengal University of Health Sciences with 50% marks (40% for SC/ST) in the subjects Physics, Chemistry, Biology and English taken together and with pass marks in each subject individually are eligible."

24. The appellant admittedly secured more than 50% in the higher secondary examination. She also had pass marks in each subject individually. The requirement was not that a candidate needed to have pass mark individually in theoretical and practical papers in subjects where there are theoretical and practical papers. Hence, in our opinion, the appellant was eligible for being enrolled on the B. Sc. Nursing course and was rightly enrolled on the said course.

25. Learned Senior Counsel for the Council relied on Rule 20(4) of the West Bengal Council of Higher Secondary Education (Examination) Rules, 2006 which reads as follows: "20 (4). In order to be declared pass in any examination, a candidate must obtain minimum of thirty per centum marks in compulsory subjects:

Provided that if the examination on any subject consists of theoretical paper and practical paper or project work thereon, the candidate shall, in order to be declared pass in the subjects, have to score thirty per centum marks in theoretical paper and practical paper or project work thereon separately:

Provided also that notwithstanding anything contained in the first proviso, a candidate shall, in order to be declared pass in the subject on Environmental Education, have to score thirty per centum marks in theoretical paper and project work thereon taken together."

According to learned Counsel going by the aforesaid Rule, the appellant was required to score 30% marks in the theory and practical paper of Chemistry separately in order to be declared pass. We are unable to agree with learned Senior Counsel. Firstly, the JENPARH Information Brochure did not indicate that the 2006 Regulations were relevant in any manner. Secondly, the Higher Secondary Examination mark sheet of the appellant did not show the appellant to have failed in Chemistry. Thirdly, the Rule extracted above, and the first proviso thereto pertains to compulsory subjects. The main part of the regulation clearly talks about compulsory subjects and the first proviso must be read in that context. In our opinion, the first proviso would not apply to an optional subject, for example, in the present case Chemistry, which was the appellant's optional subject.

26. The only ground on which the appellant's application for registration has been rejected is that she was not eligible to be enrolled on the B.Sc. Nursing course. We have held that there is no merit in such ground and in our opinion, she qualified for enrollment on the B. Sc. Nursing course. Further, was it within

the competence of the Council to enquire as to whether or not the appellant was eligible to enroll on the B. Sc. Nursing course? In our view it was not. The Council exceeded its authority in raising the said issue. Securing pass marks in Chemistry was a requirement for enrollment on the B. Sc. Nursing course. Undisputedly, the appellant has completed the said course successfully and the West Bengal University of Health Sciences has issued Bachelor of Science in Nursing Certificate to the appellant. Sec. 18 of the Bengal Nurses Act, 1934 provides that nurses, midwives and health visitors who have undergone the course of training, have passed the examinations and fulfil such further conditions as may be prescribed, shall, on payment of such fees as may be prescribed, be entitled to registration under the said Act. Admittedly, the appellant has undergone the necessary course of training and has passed the examination. No other conditions have been prescribed under the statute. No rules or regulations have been framed under the statute. Sec. 2(c) of the Act defines "prescribed" as "prescribed by rules or regulations made under this Act". In the absence of any rules and regulations prescribing any further condition which a candidate like the appellant is required to fulfil for being registered with the Council, in our view, the rejection of the appellant's application for registration by the Council was wrongful and cannot be sustained.

27. Even assuming for the sake of argument that on a true interpretation of the relevant rules/regulations, the appellant cannot be considered to have passed in her optional subject i.e. Chemistry, in our opinion, the same cannot be relevant at the stage of registration after the appellant has successfully undergone training and has successfully completed the B. Sc. Nursing course. We have also noticed that in the Bio-chemistry paper the appellant has secured impressive marks. It will be grossly unfair and unjust on the part of the Council not to register the appellant as a nurse after the appellant was permitted to get enrolled on the B. Sc. Nursing course and pursued the course for four years before successfully completed it and it will be inequitable and unconscionable to uphold such decision of the Council. We were apprised that the appellant's family which has a modest financial background had to shell out approximately Rs. 2 lacs so that the appellant could qualify as a nurse. Now, that the appellant has completed the B. Sc. Nursing course by spending four valuable years of her life and at substantial cost, it would be inhuman to countenance a situation where she is refused registration by the Council which will disentitle her to render her service as a qualified nurse at any recognized medical institution.

28. The decision in Archana Girish Sabnis (supra), relied upon by learned Counsel for the Council is completely distinguishable on facts. In that case, the Bar Council of India had framed specific rules under the Advocates Act, 1961 as regards the recognition of a degree in law obtained from any university in the territory of India after 12th day of March, 1967. Certain requirements were laid down in the rules and if a candidate obtained a degree in law without satisfying such requirements, such degree was not to be recognized for registering the candidate as an Advocate on a State roll. The candidate in that case obtained a

law degree without satisfying such conditions and in that context the Hon'ble Apex Court held that the Bar Council of India was not bound to grant a license to the said candidate. It was further observed that passing law and practicing law are two different things. One can pursue law but for the purpose of obtaining license to practice, one must fulfil all the requirements and conditions prescribed by the Bar Council of India. In the present case, the only requirements/conditions laid down in Sec. 18 of the Bengal Nursing Act are undergoing a training course and passing the requisite examination, both of which the appellant has done successfully. No other requirements have been prescribed for being entitled to be registered with the Council and no rules/regulations have been framed in that regard. It appears that an impression was given to the learned Single Judge that rules have been framed under The Bengal Nursing Act and hence there is a recording in the impugned judgment to that effect. This is, however, not correct.

29. A statutory authority must act within the four corners of the parent statute. The powers and functions of a statutory authority are prescribed and circumscribed by the statute. It cannot seek to act beyond such powers as have been conferred on it. For example, in several cases this Court has held that while granting a certificate of enlistment under the relevant statute, a Municipality or a Municipal Corporation cannot seek to enquire whether or not the applicant has title in respect of the property from which the applicant carries on business or other vocation. If the authority does so, it will be transgressing the boundaries of the statute. Reference may be had to the decision of this Court in *In Re: Venode Kumar Jalan-vs.-Calcutta Municipal Corporation*, (1987) 2 CHN 219, *Abdul Rashid-vs.-Calcutta Municipal Corporation*, (1991) 1 CHN 100 and *The Chairman, Khardah Municipality-vs.- M/s. Annapurna Bakery*, (1997) 1 CLT (HC) 32. Thus, there is a limit to the extent of enquiry that a statutory authority can make before discharging its statutory function. In the present case, the respondent Council crossed such limit by entering into an enquiry as regards the eligibility of the appellant to get enrollment on the B.Sc. nursing course. In the absence of appropriate Rules or Regulations, the Council had no authority to enquire into such issue.

30. We may note another aspect of the matter. As noted above, the petitioner had challenged a communication that she received from Asia Heart Foundation cancelling her enrollment on the B. Sc. Nursing course on the ground that she was not eligible to be enrolled on the B. Sc. Nursing course. Several other candidates who received similar communication also filed writ petitions in this court. The writ petitions were allowed and the candidates were directed to be treated as bone fide students of the course. We were told that appeals have been preferred by the Council from the orders passed in the other writ petitions but the order passed on the writ petition of the present appellant was not challenged by way of appeal. It is true that the Council was not a party in the appellant's previous writ petition. But the Council was not a party in the other writ petitions also. The Council assailed the orders in the other writ petitions by way of appeal

after obtaining leave to appeal as a non-party. However, the Council chose not to do so in the case of the appellant, whatever the reason be. The Council cannot contend that it was unaware of the order passed in the appellant's earlier writ petition nor has the Council advanced such contention. Hence, the Council should not be permitted to contend at this stage that the appellant was not a bona fide student of the B. Sc. Nursing course or was not eligible for being enrolled on such course.

31. In view of the aforesaid, this appeal is allowed. The West Bengal Nursing Council is directed to grant registration to the appellant as applied for upon payment of prescribed fees if such fees have not been paid already. If such fees have been paid the registration shall be granted within two weeks from date.

32. I fully agree with the views expressed by my brother Justice Banerjee and the conclusion drawn by His Lordship hereinabove and I intend to support the conclusion drawn by His Lordship from another angle.

33. Let us examine the present problem from the practical point of view. Admittedly the writ petitioner/appellant passed the B.Sc. Nursing Course conducted by the West Bengal University of Health Sciences after undertaking the requisite training course. Thus she is eligible to be registered as a nurse as she satisfies the eligibility criteria under Section 18 of the said Act.

34. Let us now consider the nature of service which she will have to render in the field of her work in case her prayer for registration is allowed. Will deficiency in her knowledge in chemistry theoretical paper at the Higher Secondary level stand in the way of discharging her duties in the field of her work as a nurse effectively?

35. Fact remains that after obtaining requisite marks in chemistry subject in the entrance test, she was selected for admission in B.Sc. Nursing Course. Bio-Chemistry was compulsory subject in B.Sc. Nursing Course. She obtained more than 50% marks in Bio-Chemistry subject in the B.Sc. Nursing Examination. Thus she has not only acquired requisite pass marks in the subject Bio-Chemistry in B.Sc. Nursing Examination but also improved her knowledge in Chemistry in the higher studies.

36. As such her deficiency in the knowledge in Chemistry theoretical paper at the Higher Secondary level, in my view, cannot stand in the way of discharging her duties as nurse in the field of her work in her professional life.

37. As such, I find no reason to come to a conclusion different from the conclusion drawn by my brother Justice Banerjee.

38. MAT No. 596 of 2017 and CAN No. 4235 of 2017 are accordingly disposed of, without, however, any order as to costs.

39. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.