

(2024) 05 OHC CK 0114

Orissa High Court

Case No: Writ Petition (C) No. 39868 of 2023 & Batch

GKF Nursing Institute

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: May 14, 2024

Acts Referred:

- Constitution of India, 1950 - Article 19(1)(g), 226
- Indian Nursing Council Act, 1947 - Section 16(1), 16(1)(g), 16(1)(h), 16(1)(i)

Hon'ble Judges: Chakradhari Sharan Singh, CJ; Murahari Sri Raman, J

Bench: Single Bench

Advocate: Pami Rath, Soumendra Pattanaik, G.R. Sethi, A.K. Pandey, R.N. Mishra, R.C. Mohanty, P.K. Parhi, D.R. Bhokta

Judgement

Sl.

No.",Event,"Date/ time for new

NOC","Date and time for Renewal/

Revalidation of NOC/Renewal

of recognition

1.,"Floating of advertisement

by DMET. (no application

shall be entertained

without any advertisement

being floated)","By 31R' July every

year (subject to

requirement as per

the GIS mapping and

gap analysis)",

2., "Last date of receipt of

application", 16th August, "By 15th January (1st

December

to 15th January)

3., "Issue of

Â Acknowledgement

Letter", By 30th August, By 31st January

4., "Time for compliance of

deficiencies", By 15th September, By 15th February

5., Inspection of institutions, By 31st October, By 15th March

6., "Compliance of deficiencies

as pointed out by

inspection team", By 30th November, By 31st March

7., "Recommendation to Govt.

for issue or rejection of

NOG by Council", By 31st December, By 15th April

8., "Approval of Government

for issue /not issue of

NOC by Council", By 31st January, 30th April

9., "Issue of NOC by

concerned Council.", By 28th February, By 15th May

10., "Issue of

Provisional Recognition by

Council", 31st March, By 21st May

11., "Issue of Final / Renewal of

Recognition by

Council","After the completion

of Final year

examination","After the completion of Final

year examination

after having taken note of the various earlier decisions has noticed the adverse consequences of non-adherence to the prescribed schedule in paragraph-41 as under:,,,

â€œ41. Inter alia, the disadvantages are:",,,

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the courts as",,,

it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in Muskan Dogra v. State of Punjab (2005) 9 SCC 186.,,,

(2) Midstream admissions are being permitted under the garb of extended counselling or by extension of periods for admission which again is impermissible.,,,

(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary",,,

and less meritorious admissions.,,,

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without",,,

active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their",,,

course while litigation was pending in the court of competent jurisdiction.,,,

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting

impermissible,,,

practices.,,,

(6) Timely non-inclusion of the recognized/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit." ,,,

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit." ,,,

17. In case of *Mridul Dhar v. Union of India*; (2005) 2 SCC 65, the Supreme Court has mandated that the time schedule provided in the regulations must be strictly adhered to by all concerned failing which the defaulting parties would be liable" ,,,

to be personally proceeded with.,,,

18. Though the decisions in the case of *Mridul Dhar* (supra) and *Priya Gupta* (supra) relate to medical admissions, the principles enunciated therein equally apply in professional course of ANM, GNM, B.Sc.(N), PB B.Sc.(N), M.Sc.(N)" ,,,

nursing courses. A belated grant of NOC/recognition/affiliation to these institutions has not only resulted into a complex situation, such action/inaction of the State has generated unnecessary litigations which could have been easily avoided, had" ,,,

prompt action been taken by the opposite parties, adhering to their own calendar for issuance of NOC." ,,,

19. Notably, an argument has been advanced on behalf of the petitioners that these institutions as noted above should be allowed to give admission to such students who had not participated in the entrance examination, but do possess eligibility" ,,,

criteria as laid down in the prospectus. The said submission has been made in the background of the fact that if they are not allowed to do so, the Management of these institutions shall have no other option, but to close the institutions. This" ,,,

argument is unsustainable for the single reason that the INC, which is the competent regulatory body, had clearly mandated in its notification dated 06.04.2023 (supra) that admission to B.Sc. (N) for the academic sessions 2023-24 shall be held" ,,,

through CEE.,,,

20. It will be useful to notice that the requirement of holding CEE for admission to unaided privately managed professional institutions as mandatory has been addressed by the Supreme Court in case of *Modern Dental College and Research*, ,,,

Centre & Ors. v. State of Madhya Pradesh & Ors., (2016) 7 SCC 353, wherein constitutional validity of "Niji Vyavasayik Shikshan Sanstha (Pravesh Ka

Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (hereinafter",,,

referred to as "2007 Act") and admission rules framed therein were under challenge.,,,

21. The Supreme Court, in case of Modern Dental College & Research Centre (supra), after having noticed earlier decisions, in the cases of T. M. A. Pai Foundation and Others v. State of Karnataka, (2002) 8 SCC 481, Islamic",,,

Academy of Education & Anr. v. State of Karnataka & Ors., (2003) 6 SCC 697 and P.A. Inamdar & Ors. v. State of Maharashtra & Ors., (2005) 6 SCC 537 emphasized the need of CEE to be held by agencies, for admission to",,,

educational institutions, more particularly those imparting professional education, which enjoy utmost credibility and expertise in the matter to achieve fulfillment of twin objectives of transparency and merit. The Supreme Court also observed",,,

that it is in the larger public interest which warranted such measure. Taking note of malpractices in the CEE, conducted by such private institutions themselves, the Supreme Court held that in larger interest and welfare of the student",,,

community, in order to promote merit add excellence and curb malpractices, that regulatory measures should be introduced. In paragraph 68 of the decision, in case of Modern Dental College & Research Centre",,,

(supra), the Supreme Court held thus:-",,,

"68. We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly",,,

in the larger interest and welfare of the student community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount",,,

to "restrictions" on the right of the appellants to carry on their "occupation", are clearly "reasonable" and satisfied the test of proportionality."",,,

22. Having said so, the Supreme Court, in case of Modern Dental College & Research Centre (supra), concluded that the provisions relating to admission, as contained in the Act and the Rules, were not offensive of Article 19(1)(g) of the",,,

Constitution.,,,

23. What emerges from the decision of Supreme Court, in case of Modern Dental College & Research Centre (supra), on the question of the right of State to make

provisions for CEE for admission to unaided private educational institutions,",,

that the Supreme Court not only upheld the provisions of 2007 Act in this regard, rather emphasized its need in the larger interest and welfare of the student community to promote merit and excellence and curb malpractices.",,

24. The requirement prescribed by the INC of giving admissions in the nursing courses is thus, not only in exercise of its statutory powers to regulate admissions but it is in consonance with law laid down by the Supreme Court in the cases of" ,,,

Islamic Academy of Education (supra), T. M. A. Pai Foundation (supra), P.A. InamdarÂ (supra) and Modern Dental College & Research Centre (supra)." ,,,

25. Considering the entire conspectus of the matter as discussed above, the reliefs which the petitioners are seeking in the present batch of writ petitions cannot be granted for the following reasons:" ,,,

(i) The institutions cannot be allowed to give admissions to students for the academic sessions 2023-24 as the extended cut-off date for such admission prescribed by the INC expired on 30.10.2023 itself. The said timeline, in the Courtâ€™s opinion should not be" ,,,

extended by this Court exercising power of judicial review under Article 226 of the Constitution of India.,,,

(ii) In view of the policy of the INC that admissions to such courses would be only through CEE and no candidate who has not qualified or not appeared in the CEE shall be given admission, such requirement which aims to achieve the object of admission of" ,,,

meritorious candidates in the courses should not be tinkered with, more so, in view of the law laid down by the Supreme Court in P.A. Inamdar (supra) and Modern Dental College & Research Centre (supra)." ,,,

26. However, while rejecting the reliefs sought for in the present batch of writ petitions, we deem it just and proper to issue following directions in the interest of justice and to avoid recurrence of such situation, as has arisen in the present" ,,,

batch of cases in future, because of non-adherence to the calendar prescribed by the Health and Family Welfare Department, Government of Odisha: -" ,,,

(i) All concerned shall, without any exception, adhere to date/time schedule prescribed by the Government of Odisha in the Health and Family Welfare Department vide Letter No.26601 dated 22.10.2019; for issuance of NOC and grant of recognition." ,,,

(ii) There shall be no departure, in any case, from the said time schedule without the leave of this Court. Any departure from time schedule shall be viewed seriously by this Court." ,,,

(iii) Unless otherwise provided by the INC, no admissions shall be given by any nursing institution in the courses without merit-based CEE.",,,

(iv) No admission shall be given to any student in a nursing institution after the cut-off date for admission, as may be prescribed by the INC."...

27. While parting with the present judgment, we deem it apposite to notice, which is apparent from the records, that admissions have been allowed in B.Sc (N) courses even after the expiry of cut-off date. We express our serious concern over", ,,

this happening. For the present, however, we are not expressing any opinion, in the present proceeding, about the consequences of such admissions, if that have been given breaching the INC guidelines." ,,,

28. With the aforesaid observations and directions, these writ petitions stand disposed of." ,,,

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