
(2012) 08 KL CK 0127

High Court Of Kerala

Case No: Writ Petition (C) . No. 16442 of 2012 (E)

Dr. Josco C. George

APPELLANT

Vs

State of Kerala and
Kerala University of
Health and Allied
Science (Kuhas)

RESPONDENT

Date of Decision: Aug. 7, 2012

Acts Referred:

- Constitution of India, 1950 - Article 30

Hon'ble Judges: K.M. Joseph, J; K. Harilal, J

Bench: Division Bench

Advocate: Peeyus A. Kottam, for the Appellant; Roshen D. Alexander, Government Pleader for R1, Sri. P. Sreekumar, SC, Kerala Uty Health and Allied Science, for R2 and R3, Sri. Leo George, SC, LBS Centre and Sri. P.B. Suresh Kumar (Sr.), SC, LBS Centre for R4, for the Respondent

Judgement

K. Harilal, J.

The petitioner is the Chairman of a self financing Nursing College by name Josco College of Nursing, Panthalam in Alappuzha District. The above college is affiliated to the Kerala University of Health and Allied Sciences and obtained approval from the Indian Nursing Council and the Kerala Nursing Council for conducting M.Sc. and B.Sc. nursing courses. By Ext.P1, the Government of India declared that the aforesaid college is a minority educational institution covered under Article 30 of the Constitution of India. The Kerala University of Health & Allied Sciences granted consent of affiliation to M.Sc. courses in various disciplines during the academic year 2012-13. The Indian Nursing Council and the Kerala Nurses and the Midwives Council granted their approval to various disciplines of M.Sc. nursing programme by Exts.P3 to P5.

2. As per Ext.P6, the Kerala University of Health & Allied Sciences granted consent of affiliation to the enhancement of seats in B.Sc. nursing from 50 to 60 seats in the

petitioner's college for the academic years 2011-12 and 2012-13. As per Ext.P7, the Indian Nursing Council approved the enhancement of students to be admitted in petitioner's college from 50 to 60 for the year 2011-12 and till next inspection. As per Ext.P8, the Kerala Nurses and Midwives Council accorded sanction to admit 60 students for B.Sc. Nursing during the year 2012-13.

3. The grievance of the petitioner is that the petitioner as per letter dated 15-06-2012 requested the second respondent University to give affiliation for enhancement of seats in B.Sc. nursing course: but the second respondent as per Ext.P9 letter dated 21-06-2012 informed the petitioner that the application for affiliation to enhancement of seats in B.Sc. nursing course for the year 2012-13 will be considered only on production of No Objection Certificate from Government of Kerala. The Government of Kerala by Ext.P10 circular issued guidelines for affiliation of self financing medical/ dental/ nursing and paramedical institutions to the Kerala University of Health and Allied Sciences. It is averred that the Government has no power to issue such circular, nor the University has any obligation to obey such directions. That apart, the petitioner's college has already entered into an agreement with the Government regarding admission of B.Sc. Nursing for the academic year 2011-12. The petitioner entered into similar agreement with the Government for the year 2012-13 by Ext.P16. The Government of Kerala by Ext.P17 order dated 30-06-2012 notified the list of self financing colleges which entered into agreement with the Government of Kerala on admission and fee regarding B.Sc. nursing course for the academic year 2012-13. The petitioner's college is also included in Ext.P17 Government order as serial No. 22.

4. The first respondent filed a counter affidavit emphasising the need for NOC of the Government for the enhancement of seats and asserting the rights of the Government to make it as a condition precedent for granting affiliation. By virtue of Ext.R1(a) Government Order dated 17.02.2012, Government have issued specific guidelines for starting Nursing Colleges in the Self Financing Sector. Ext.R1 (a) specifically emphasises that it has been issued to ensure the standard of the Nursing Institutions, maintain the quality of education, transparency of granting permission to start courses under Self Financing Nursing Sector and standardize the procedure for the same. Clause 6 of Ext.R1(a) contemplates submission of application in the prescribed form for starting of nursing colleges which has to be submitted from 1st of August to 30th of September for the next academic year. The order further contemplates a process of inspection to be conducted by the Deputy Director of Nursing Education for B. Sc Nursing/ M. Sc Nursing Courses as well as the Registrar, Kerala Nursing and Midwives Council (KNMC) for general nursing courses for GNM/ Post Basic Diploma Courses. The NOC will be granted to the applicant on or before the 31st of December on getting a satisfactory report with recommendations of the Deputy Director of Nursing Education, so as to commence the class for the next academic year. If the deficiency still exists, the request for NOC will be rejected.

5. Clause VI is relevant and applicable to the instant case. As per Clause VI, the institutions should apply in the prescribed form for enhancement of seats with the token of remittance of prescribed fee for the purpose and also along with the approval of Indian Nursing Council. On request of such application, the same will be examined and enhancement will be granted to eligible cases subject to obtaining approval/ affiliation from KNMC and Kerala University of Health Sciences. If the application is rejected on the ground of deficiency in the required facilities, the position will be informed to the applicant and further processing will be made only after rectification of defects and ensure compliance to the Deputy Director of Nursing Education. According to Clause VII, the institutions should obtain approval from Indian Nursing Council, Kerala Nursing and Midwives Council and affiliation from Kerala University of Health Science. The institution should execute the agreement with the Government and letter of permission from the Government. It is specifically stated in Ext.R1(a) that the applicant should obtain letter of permission (LOP) for starting a course in a particular academic year and the application for LOP should reach the Government before the 30th of April of that year and after processing, Letter of Permission will be issued to the eligible applicants on or before 31st of May so that they can start the course in that year itself. No Letter of Permission will be issued after 31st of May of the academic year in which Course is intended to be started.

6. Therefore, going by Ext.R1(a) Government Order, petitioner is duty bound to submit an application for enhancement of seats in the prescribed format as per Ext.R1(a) Government Order. The format is also annexed to the above stated Government Order. As on today the petitioner has not submitted the applications for enhancement of seats for B. Sc Nursing Courses/ M. Sc Nursing Courses to the Government in the prescribed form along with prescribed fees. If the institution submits the application the same will be considered on its merits. Unless and until the institution submits its application, Government cannot consider the request of the petitioner to enhance the seats. The conditions imposed in Ext.P9 is proper, legal and reasonable. The right to get affiliation is not a fundamental right but at the most a statutory right only.

7. The petitioner has filed a reply affidavit along with Ext.P16 to P19. In the reply affidavit the petitioner contended that Ext.R1(a) dated 17/2/2012 is not intended for the academic year 2012-13. It is intended for the academic year starting from 2013-14. Ext. R1(a) is the guideline for starting new college. As per Ext.R1(a), the date for submission of application will commence only from 1/8/2012 to 30/9/2012. Therefore, it is apparently clear that Ext.R1(a) is not intended for the academic year 2012-13. Apart from that the date fixed for submitting application for revalidation of NOC also starts from 1st August of every year. Ext.R1(a) stipulates that time for submitting application for revalidation and processing will be same as prescribed for the original application. Thus Ext.R1(a) is not intended for academic year 2012-13, but it is for the next academic year onwards. Letter of Permission referred to in Ext.R1(a) is for starting a course and not for enhancement of seats. For the academic year 2012-13, the agreement between the Government and the college was executed only in the month of May and June 2012. Therefore, it is clear that

Ext.R1(a) is not intended for this academic year. Ext.P16 agreement dated 5/6/2012 entered into between the Government and petitioner"s association itself will show that Ext.R1(a) is not intended for the academic year 2012-13, because as per Ext.R1(a), the college will have to apply for letter of permission with the copy of the agreement entered into with the Government. For the academic year 2012-13, the petitioner need not submit application for enhancement of seats as prescribed in Ext.R1(a) since it has not come into effect for this academic year.

8. The learned counsel for the petitioner submits that the University is not competent to impose any condition for affiliation like NOC from the Government as the condition precedent for granting affiliation. The Government has no power to issue any direction to the University in imposing condition under which affiliation can be granted or declined. The petitioner is entitled to get affiliation for the enhanced 10 seats for B. Sc. Nursing in the light of the approval granted by the Indian Nursing Council and Kerala Nursing Council and the consent of affiliation issued by the Kerala University of Health & Allied Sciences. He would submit a perusal of Ext.R1(a) would show that it is intended to apply from next year only.

9. The learned Government Pleader, per contra submitted that the process by which the statutory rights conferred on the petitioner is prescribed by Ext.R1(a) Government Order. Petitioner"s contention that Government have no power to issue any direction to the University for obtaining NOC from the Government in order to get affiliation is untenable. The Government has power to insist for obtaining NOC as long as the conditions prescribed under Ext.R1(a) is not in consistent with any of the provisions of the Indian Nursing Council Act and the petitioner could not point out any inconsistency between Ext.R1 (a) Government Order and the Indian Nursing Council Act. State Government"s powers and rights are to be exercised by virtue of Entry 25 List III Schedule IX of the Indian Constitution. Ext.R2 (a) Government Order prescribes specific guidelines for starting new colleges, which includes enhancement of seats.

10. The learned counsel for the University submits that the University insists for the NOC of the Government for the enhancement of seats as per Ext.P10 circular dated 22/11/2010 and subsequent Government order, ExtR1(a) dated 17/2/2012. Ext.R1(a) Government Order, NOC from the Government is a condition precedent for granting affiliation for starting a new course and for enhancement of seats in existing course. Though the University has not framed a statute as per clause 41 of the Kerala University of Health & Allied Sciences Act, the University is bound to comply with the directions of the Government.

11. We have given our anxious considerations to the rival submissions made by the learned counsel for the petitioner, the learned counsel for the University and the learned Government Pleader. Though the rival submissions centers around the rights guaranteed under the Constitution asserted by the petitioner, the authority and power of the Government to issue NOC and the illegality in insisting for NOC by the University for

granting affiliation, these issues do not loom large in this writ petition in view of the fact that Ext.R1(a) Government order by which the Government imposed NOC as a condition precedent for granting affiliation by the University is not challenged in this writ petition. Moreover the petitioner has already entered into Ext.P16 agreement with the Government on admission and fees and consequently the Government issued Ext.P17 Government Order wherein petitioner's college is also included as serial No. 22 in the list of colleges, which entered into agreement with Government on admission and fees.

12. We notice the willingness expressed by the Government in the counter affidavit to consider the application for NOC on merit, if the petitioner submits an application for NOC for the enhancement of seats from 50 to 60. We sought the response of the petitioner and the first respondent to this open offer made in the counter affidavit. The petitioner expressed his willingness to file an application for NOC for the enhancement of seats from 50 to 60, if the first respondent is willing to consider on merit as stated in the counter affidavit. Per contra, the learned Government Pleader submitted that the first respondent is also ready and willing to consider that application provided that enhancement can be considered for the next academic year 2013-2014. According to the learned Government Pleader, for this academic year 2012-13, application for enhancement of seats should have been submitted before 30/4/2012 and no NOC can be issued after 31st May as per Ext.R1(a) Government Order.

13. We are not impressed upon the above submission made by the learned Government Pleader which could not find a place either in the counter affidavit or in Ext.R1(a) Government Order. Going by Ext.R1(a) Government Order dated 17/2/2012, we notice that for starting a particular nursing course application shall be submitted from 1st of August to 30th September. If that be so, how can time schedule starting from 1st August be made applicable to this year by virtue of Government Order issued on 17/2/2012. Clause 6 deals with the enhancement of seats, but, there no time limit is prescribed for NOC for enhancement of seats. In Clause 10 time limit is prescribed for submitting application for LOP and last date for issuing of LOP. The petitioner through his association has already entered into Ext.P16 agreement with the Government on admission and fee for academic year 2012-13 on 5/6/2012. Pursuant to Ext.P16, the Government has issued Ext.P17 order dated 30/6/2012 wherein petitioner's college is also included as serial No. 22 in the list of colleges which entered into an agreement with the Government on admission and fee for the year 2012-13. As per Ext.P19, the private self financing nursing colleges, who are now part of the association and entered into agreement, need not enter into separate agreement in the year 2012-13. As per Clause X application for LOP enclosing copy of approval from Indian Nursing Council and the Kerala Nurses and the Midwives Council and affiliation from the Kerala University of Health & Allied Sciences along with agreement with Government on admission and fee should reach the Government before 30th April of that year and no LOP will be issued after 31st May of the academic year in which course is intended to be started. But Exts.P16 and P17 show that the Government entered into agreement with the petitioner

and private colleges for the year 2012-13 on 5-6-2012 and consequently Ext.P17 order was issued on 30-6-2012 only. Thus the cut-off date of 31st May is not made applicable to 2012-2013. So, if the 1st respondent makes 31st May as cut off date for submitting application for NOC for this academic year to the petitioner's college which already entered into agreement with the first respondent and obtained necessary approval from Indian Nursing Council, Kerala Nurses and the Midwives Council and the Kerala University of Health & Allied Science, it could be criticised as being discriminatory as contended by the petitioner. No doubt, the learned Government Pleader points out that the sanction from the Kerala Nurses and Midwives Council for enhancement of seats was given only on 4/6/2012 (Ext.P8). In fact in Ext.(R1a), institution need produce the approval of the Indian Nursing Council only.

14. As per Ext.P17, the Director of LBS Centre for Science and Technology shall furnish the first allotment list on or before 24th of July and final allotment of the students to be admitted to the member college on or before 22/8/2012. The counsel for the petitioner submitted that the first list has not been published so far and the said submission has been denied by the first respondent and submitted that the same was published on 31/7/2012. In view of the sequence of events going on after 31st May 2012, we were not inclined to accept the submission that time schedule is intended for enhancement of seats in existing course by Ext.R1(a).

15. In the above circumstances this case was posted again before the Bench and we sought further clarification from the first respondent on two issues: (1) Whether LOP is required for enhancement of seats and whether any cut off date is prescribed for filing application for enhancement of seats and also for granting NOC for the same. The learned Government Pleader on further instruction submitted that LOP is not required for enhancement of seats. The learned Government Pleader further submitted that cut off date is not prescribed either for submitting application for enhancement or for granting NOC for enhancement of seats as per Ext.R1(a).

16. We have taken note of the fact that the petitioner's college has already obtained necessary approval from Indian Nursing Council and Kerala Nurses and Midwives Council for the enhancement of seats for the year 2012-2013. The Kerala University of Health and Allied Sciences has also granted consent of affiliation for the year 2012-13. The Government has also entered into agreement with the petitioner's college on admission and fee for the year 2012-13. Thus the formalities have been substantially complied except NOC from the Government. In the above circumstances, having considered the entire aspects and present situation, we allow the petitioner to file a fresh application for NOC for enhancement of seats from 50 to 60 in the course of B.Sc. Nursing for this year (2012-13) within five days from today, in compliance with the requirements under Ext.R1(a). We further direct that the first respondent shall consider and pass appropriate orders on that application on merit within one week from the date of receipt of such application, if it is filed in order within the time specified above.

The writ petition is disposed of as above.