

(2009) 12 MAD CK 0148

Madras High Court

Case No: Writ Petition No. 17117 of 2009 and M.P. No. 1 of 2009

Nightingale Institute of Nursing
Education

APPELLANT

Vs

The Registrar, The Tamil Nadu
Dr. M.G.R. Medical University,
Indian Nursing Council and State
Government of Tamil Nadu

RESPONDENT

Date of Decision: Dec. 18, 2009

Acts Referred:

- Constitution of India, 1950 - Article 254(2)
- Indian Medical Council Act, 1956 - Section 10A

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S. Kanmani Annamalai, for the Appellant; A.R.L. Sundaresan, SC for A.L. Gandhimathi, for R1 and M.C. Manibharathi, GA (Takes notice) for R. 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Heard both sides. The petitioner is an Institute for Nursing Education represented by its Chairman. The petitioner has filed the present writ petition, challenging an order of the first respondent, i.e. The Tamil Nadu Dr. M.G.R. Medical University, dated 11.8.2009 and after setting aside the same, seeks for the grant of affiliation to the petitioner institution for conducting Post Basic B.Sc.(Nursing) for the academic year 2009-2010 without insisting for prior permission from the State Government.

2. By the impugned order, the petitioner institution was informed by the first respondent that in terms of the Affiliation of Nursing Colleges for Trained Nurses Statutes of the first respondent University, prior permission of the State

Government is mandatory to start B.Sc.(Nursing) course for Trained Nurses Degree course. Therefore, the petitioner was directed to approach the State Government for getting prior permission.

3. It is the case of the petitioner that the State Government had granted permission for starting the Nursing College. Based on that, the Indian Nursing Council, New Delhi (second respondent), by an order, dated 30.5.2008 granted permission. The first respondent University by a further order dated 10.7.2008 granted provisional affiliation to the petitioner to start the first year B.Sc (Nursing) course from the academic year 2008-2009. In accordance with the said permission the petitioner had commenced its course and had successfully completed the first year. It is now conducting the second year course for the first batch. The second respondent Indian Nursing Council had also granted an appropriate certificate, dated 18.8.2008 for running B.Sc (Nursing) course. The second respondent had also exempted and relaxed certain earlier conditions for obtaining No Objection Certificate and Essentiality certificate from the respective State if the institution was already recognized for conducting B.Sc (Nursing) course vide its circular dated 19.2.2009.

4. Based on the guidelines issued by the second respondent Indian Nursing Council, the petitioner applied for starting an additional course of Post Basic B.Sc (Nursing) to the second respondent. The second respondent, after scrutinizing the application and after making necessary inspection with reference to the infrastructure facilities, permitted the petitioner to start P.B.B.Sc (Nursing) programme with an intake of 30 students for the academic year 2009-2010 vide its communication, dated 6.7.2009. It was thereafter, permission/suitability letter was obtained from the second respondent.

5. They made an application to the first respondent University for the grant of affiliation for the said additional course. But the first respondent without any justification denied the grant of affiliation on the ground that the petitioner must once again seek for prior permission from the State Government even to start additional courses. There is no such rule or condition for getting prior permission for starting the additional course. Under the relevant Rule No. 51 for starting an additional course, only two conditions were stipulated, i.e. an applicant should own and possess not less than two acres of land and that they should deposit a sum of Rs. 5 lakhs towards security deposit.

6. It is the case of the petitioner that they are already having necessary lands and they have also deposited amounts on 30.6.2008 at the time of starting B.Sc.(Nursing) course. If any additional deposit was required, they are also willing to deposit the same. It is stated that the petitioner institution has got Government's permission vide G.O.Ms. No. 23, Health & Family Welfare Department, dated 24.01.2008 for starting their B.Sc.(Nursing) course. There is no further requirement to get a fresh permission each time when additional courses are started.

7. Notice was directed to be served on the respondents. On notice from this Court, the first respondent University has filed a counter affidavit, dated 9.9.2009. In the counter affidavit, it was stated that the application for affiliation will have to be made between 1st July and 31st October of the academic year preceding to which affiliation is sought for. The main ground taken for not considering the affiliation was that the college did not get prior permission from the Government for conducting the additional course. In the counter affidavit, in paragraph 16, it was averred as follows:

16. ...As per the provision of the Affiliation of Nursing colleges for Trained Nurse statutes of this University, the permission of the Government of Tamil Nadu is sine qua non for starting the first year B.Sc (Nursing) degree course for Trained Nurses. Therefore, the petitioner Trust was informed to obtain the permission of the Government of Tamil Nadu at the first instance and then submit the proposal to this University for taking further action in this regard by this University letter dated 11.8.2009.

8. In the Tamil Nadu Dr. M.G.R. Medical University (Affiliation of Nursing Colleges for Trained Nurses) Statutes, statute No. 6 states that the application for Certificates of Registration will have to be submitted along with the permission of the Government to establish the college and shall contain the further particulars. In the present case, already the petitioner institution had obtained the Government's permission. Nowhere the Statute prescribes that even for starting additional courses, permission of the State Government has to be obtained.

9. On the contrary, the guidelines issued by the Indian Nursing Council for starting P.B.B.Sc(Nursing) course, it is stated that if the institution is recognized for B.Sc (Nursing) programme by the Indian Nursing Council, then the institution will be exempted from obtaining no objection certificate/essentiality certificate for conducting P.B.B.Sc. (Nursing) programme from the State Government. Already, the petitioner's institution has been recognized by the Indian Nursing Council for conducting B.Sc (Nursing) Programme with an intake of 50 students and also for conducting P.B.B.Sc(Nursing) programme with an intake of 30 students. Therefore, the action of the first respondent University in keep on harping that each time permission of the State Government has to be obtained is not a legal requirement but an unnecessary harassment.

10. The learned Senior Counsel for the respondents placed reliance upon the judgment of the Supreme Court in Govt. of A.P. and Another Vs. J.B. Educational Society and Another etc., wherein it was emphasised that both State legislation and the Central legislation on field can stand together if there are no repugnancy. If the State law obtained the President's assent, then under Article 254(2) of the Constitution of India, the State legislation having obtained President's assent will prevail in that State. Therefore, there was nothing wrong in the State Government prescribing a condition for permission in addition to a permission being obtained

from a Central Council. No one can quarrel with the said proposition of law.

11. But, in the present case, neither the Tamil Nadu Dr. M.G.R. Medical University nor the statutes framed thereunder requires each time prior permission of the State Government even for affiliation for the additional courses. In the absence of same, merely because the first respondent University prescribed in their application format, it cannot insist on such condition, which is neither a requirement nor contemplated under the relevant law. If the State legislature has any intention to make such a pre-condition of prior permission from the State Government, then as was done in the case of the Medical Colleges wherein by an amendment to the Indian Medical Council Act, 1956, Section 10A was introduced by the Parliament vide Amendment Act 31/93. The said section reads as follows:

10A. Permission for establishment of new medical college, new course of study, etc.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1- For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2- For the purposes of this section "admission capacity" in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

12. In the absence of such condition by the State Legislature either made to the Tamil Nadu Dr. M.G.R. Medical University or by any other State law time being in force, insistence by the first respondent University to get prior permission for starting the additional course of P.B.B.Sc. (Nursing) is unwarranted and uncalled for. Hence the impugned order is set aside. The first respondent is directed to consider the petitioner's request for affiliation in accordance with law within a period of four weeks from the date of receipt of copy of this order and communicate the result of the petitioner without fail.

13. The writ petition will stand allowed. There will be no order as to costs. Consequently, connected miscellaneous petition stands closed.