

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8644 OF 2015

Bhavani Sevabhavi Sanstha,
Parbhani, Through its President,
Pratap s/o. Bhaskarrao Deshmukh,
Age 45 Years, Occ. Agri.
R/o. Kranti Chowk, Parbhani,
Tal. & District Parbhani.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai.
2. The Director of Medical Education
and Research, Government Dental
College and Hospital Building,
St. George's Hospital Compound,
Mumbai – 400 001.
And Youth Services,
Maharashtra State, Pune
3. Maharashtra University of Health
Sciences, Nashik
Through its Registrar
4. The Maharashtra Nursing Council,
Mumbai, through its Registrar.

RESPONDENTS

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Mr.V.D.Salunke, Advocate for the Petitioner
Mr.S.D.Kaldate, AGP for Respondent Nos.1 & 2
Mr.C.A.Jadhav, Advocate for Respondent Nos.3
and 4.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 29.06.2016
Pronounced on : 15.07.2016

JUDGMENT: (Per S.S.Shinde, J.):

Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. The background facts leading for filing this Petition as disclosed in the memo of Petition are as under:

It is the case of the petitioner that with a view to provide better education to the needy students at Parbhani and with a view to start B.Sc. Nursing College at Parbhani as per the relevant guidelines prevailing at that time, the petitioner had submitted a proposal to start B.Sc. Nursing College for the academic year 2011-2012 on

30.10.2010, along with all the necessary documents and the fees. The check list which is annexed to the proposal clearly demonstrates that what were the facilities available with the petitioner, and the check list provided by the University at that time i.e. for the academic year 2011-2012 was showing compliance on the part of the petitioner.

4. It is further the case of the petitioner that as per Section 64 of the Maharashtra Health Universities Act, 1998, the petitioner had submitted a proposal to start B.Sc. Nursing Course on 30.10.2010 along with all the necessary documents. As per clause 7 of the prescribed form provided by the Health University, there was an option to have own or attached Hospital and note was given in the said application form itself that (1) in case of attached hospital (s), attach a memorandum of understanding between

the trust and owner of the Hospital (s) on a stamp paper of Rs.100/- (each) duly notarized, at least for a duration of five years. Since the petitioner was having attached hospitals, it annexed with the proposal the affidavits on stamp papers of Rs.100/- of Ankur Bal Rugnalaya and Godawari Maternity and Nursing Home. As such, the petitioner fulfilled all the criteria to start the B.Sc. Nursing Course.

5. It is further the case of the petitioner that the University pointed out the following three deficiencies vide letter dated 27.12.2010 and because of that did not recommend the proposal of the petitioner.

- 1) Own 3 acres land or 54000 sq.ft. construction as per INC norms is not available. The 9.12 acres land shown by the trust belongs to the President of the trust. Registered sale deed of land is not available.

2) College and Hostel building plan is not as per INC norms.

3) Audited statement for the financial year 2009-2010 is not available.

6. It is further the case of the petitioner that in response to the letter dated 27.12.2010 of the University, the petitioner, vide letter dated 19.01.2011, informed the Registrar of the University that the petitioner had complied with all the three deficiencies which were pointed out by the University. It was specifically stated that the petitioner purchased 5 acres of land and a registered sale deed was also placed on record. The building plan was as per the norms of INC as well as audit report of the Year 2009-2010 also were placed on record.

7. It is further the case of the petitioner that as the petitioner had complied with the deficiencies which were

pointed out and therefore, the Desk Officer has directed to submit fees for the scrutiny of the proposal and in pursuant thereto, that amount was paid by the petitioner. It is further the case of the petitioner that as the petitioner had submitted requisite fees and therefore, respondent no.2 Director of the Medical Education and Research, Mumbai, appointed three members Committee to verify the infrastructure for granting suitability certificate to the petitioner. Three members on the said Committee comprising Dr.M.M.Doiphode, Mr.S.S.Batule and Smt. Panchashila Jawale directed the Committee to submit a report as per the Government policy.

8. It is further the case of the petitioner that as the Committee was appointed, the Committee inspected the infrastructure available with the petitioner Institution and submitted a report in the

meanwhile, the petitioner was directed to pay the fees by the University and in pursuant thereof, the petitioner submitted revalidation fees up to 2014-2015. It is submitted that as after verification of the infrastructure available with the petitioner institution, the report was submitted by the Committee but as that was confidential report, the same was not made available to the petitioner Institution. Pursuant to the Committee report, respondent no.2 forwarded the proposal of the petitioner to respondent no.1 and it was specifically stated that the petitioner institution has complied with the deficiencies and it was specifically stated that the petitioner institution is Competent to run the B.Sc. Nursing Course.

9. The learned counsel for the petitioner submits that the petitioner's request for issuing Essentiality Certificate is turned down by respondent no.1 on the

ground that the petitioner has no 100 bedded parent Hospital. It is submitted that the said letter is written on the basis of the letter received by respondent no.1 from the Indian Nursing Council by observing that there is need of 100 bedded parent Hospital. In fact, if the contents of the said letter are perused, it is revealed that the said requirement was for the academic year 2015-16. It is submitted that the petitioner's proposal is of the academic year 2011-12, and thereafter, the same was pending at the Government level. The petitioner's proposal ought to have been considered on the basis of the conditions laid down in the application form for the academic year 2011-12 issued by the Maharashtra University of Health Sciences, Nashik. It is submitted that in the said application form, it is mentioned that in case of attached hospital (s), attach a Memorandum of Understanding

between the Trust and owner of the Hospital (s) on stamp paper of Rs.100/- (each) duly notarized at least for five years. It is further mentioned that there should be own running Hospital of the applicant's society / Trust for Medical, Ayurved, Unani and Homeopathy faculties. It is submitted that in order to comply with the notes given in the said application, the petitioner entered into Memorandum of Understanding with the Hospital run by Dr.Chetan Kalyanrao Mokashe wherein the permission was granted by the said Hospital to the petitioner to utilize the Hospital for nursing students to perform practicals. It is submitted that the said Hospital is 50 bedded. The petitioner has also entered into an agreement with the Godavari Hospital, Parbhani, having 50 bed by executing a Memorandum of Understanding that the said Hospital will allow the students of the petitioner to perform practicals. The

sum and substance of the arguments of the learned counsel for the petitioner is that when the Directorate of Medical Education and Research, Mumbai, by a letter dated 10th January, 2014 recommended the case of the petitioner observing that all the deficiencies have been cured by the petitioner and the petitioner has ability to run the nursing course, respondent no.1 should not have given altogether different reasons while refusing Essentiality Certificate, which were not indicated to the petitioner either by respondent no.2 or by the Director of Medical and Research Education, Mumbai. It is submitted that as and when the Pharmacy Council of India may have occasion to examine the proposal of the petitioner, that time the Indian Nursing Council may look into the guidelines / requirements laid down by the said Council. Therefore, the learned counsel for the

petitioner submits that the Petition may be allowed.

10. The learned AGP appearing for respondent no. 1 relying upon the averments in the affidavit-in-reply submits that the Indian Nursing Council is a Apex Body to consider the proposal received to it along with respective Government order or NOC to grant permission to start New Nursing Course. As per the guidelines and minimum requirements to establish B.Sc. (N) College of Nursing, it is necessary to have 100 bedded Parent (own) Hospital to become eligible to establish B.Sc. (N) course.

11. We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for respondent nos.1 and 2 – State and the learned counsel appearing for respondent nos.3 and 4. With their able assistance, perused the pleadings in the

Petition, grounds taken therein, annexures thereto and affidavit-in-reply filed by respondent no.1. Upon careful perusal of the contents of the letter written by the Director, Directorate of Medical Education and Research, Mumbai, to respondent no.1 Department. It is abundantly clear that the said authorities stated in the said letter that the petitioner has cured all the deficiencies / shortcomings and has the ability to establish and run B.Sc. Nursing course. The relevant contents of the letter dated 10th January, 2014, [Exhibit-G Page-48], read thus:

"यास्तव शासनास कळविण्यात येते की, सादर संस्थेने संदर्भ क्र 3 च्या शासन पत्रात नमूद केलेल्या त्रुटींची पूर्तता करून या संचालनालयास सादर केलेले आहे. (सोबत प्रत) शासनास कळविण्यात येते की, संबंधीत संस्थेकडून त्रुटींची पूर्तता करण्यात आलेली असून सदर संस्था सक्षम आहे असे या संचालनालयाचे अभिप्राय आहेत. (संदर्भ क्र. 2 च्या पत्रांची छायांकित प्रत व 5 सोबत जोडण्यात आलेले आहे).

It is not in dispute that the said Authority is a competent authority in the field and the observations in the said letter are based upon the office record.

12. Upon careful perusal of the copy of the application submitted by the petitioner to the Registrar, Maharashtra University of Health Sciences, Nashik, it appears that to submit proposal to open new College or Institute the applicant is required to submit application in four copies of prescribed format. It appears that the said format is provided for submitting the proposal for opening new College or Institute for the academic year 2011-12. It is not in dispute that the petitioner's proposal / application for opening new Nursing College at Parbhani was for the academic year 2011-12. In the said application form after clause 7, there is foot note, which reads thus:

- 1) *In case of attached hospital (s), attach a Memorandum of Understanding between the Trust and owner of the hospital (s) on stamp paper of Rs.100/- (each) duly notarized at least for five years.*
- 2) *There should be own running hospital of the applicant's Society / Trust for Medical, Ayurved, Unani & Homoeopathy faculties.*

Therefore, the petitioner's application / proposal for the academic year 2011-12 proceeded further on the basis of the requirement as stated in the format of the said application. It is also not in dispute that the petitioner removed / cured deficiencies pointed out by respondent no.2 and also respondent no.3 and thereafter respondent no.2 sent a letter to respondent no.1 stating therein that all the deficiencies / shortcomings have been cured by the petitioner and the petitioner has

ability to establish College at Parbhani. Upon perusal of the copies of documents placed on record, it also appears that the petitioner entered into the Memorandum of Understanding with two Hospitals at Parbhani having 50 beds. Those Hospitals agreed to allow the students to use the said Hospitals for the purpose of practicals. As rightly contended by the learned counsel for the petitioner that as and when the proposal will reach to respondent no.4, respondent no.4 will look into the procedure / guidelines / rules and then only take appropriate decision. However, there was no reason for respondent no. 1 to refuse Essentiality Certificate.

13. Therefore, in the light of discussion in the foregoing paragraphs, in our opinion, respondent no.1 should not have refused to issue Essentiality Certificate on the ground that the petitioner does not

possess 100 bedded parent hospital. It further appears that the reasons mentioned by respondent no.1 in the impugned communication is relying upon the instructions issued by the Indian Nursing Council for the academic year 2015-16.

14. In that view of the matter, the impugned communication is quashed and set aside. Respondent no.1 is directed to reconsider the issue of issuance of Essentiality Certificate keeping in view the communication dated 10th January, 2014, issued by the Director, Directorate of Medical Education and Research, Mumbai, and also keeping in view the fact that the proposal of the petitioner was for the academic year 2011-12 and format of application issued by the Maharashtra University of Health Sciences, Nashik, has been fulfilled by the petitioner, however, without raising the

ground that the petitioner has no 100 beds parent Hospital, as expeditiously as possible, however, within 5 weeks from today.

15. Rule made absolute in the above terms. The Writ Petition stands disposed of accordingly. The parties shall act upon authenticated copy of this order.

16. The learned AGP undertakes to communicate this order through the Government Pleader's office to respondent no.1.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE