

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.22980 of 2015
Decided on :03.10.2016**

Ashoka Educational Trust

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Nitin Kant Setia, Advocate
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab
for respondent No.1.

Mr. Sarabjit Singh, Advocate
for respondent No.2.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks direction to issue roll numbers of 30 students (Annexure P-3) of the petitioner-institute in the batch of 2014-2015 for the 1st year of Auxiliary Nursing and Midwifery (ANM) Course and to allow them to appear in the ongoing examinations which were to be started from 28.10.2015.

It is pertinent to mention that vide interim order dated 29.10.2015, it was noticed by this Court that fee in the shape of bank draft had been adjusted with the respondent-council. The said demand draft had not been encashed, accordingly, students of the petitioner-institute were permitted to sit in the examination, subject to the final decision of the writ petition.

The pleaded case of the petitioner is that it is Trust registered under the Societies Registration Act and has established a nursing institute

under the name Ashoka Institute of Nursing, which is functioning since 2012. Permission to grant admission to 30 students in the ANM course for the session 2014-2015 had been granted. In pursuance of the same, the petitioner-institute had admitted the 30 students, as per the sanctioned strength before the last date, which was 30.10.2014. The covering letter dated 28.11.2014 (Annexure P-2) addressed to the respondent-council, showing the admission fee, registration/admission forms alongwith bank draft dated 28.11.2014 bearing No.653051 for ₹30,000/- was relied upon. Various documents had also been attached in the form of matriculation certificate, photocopy of 10+2 certificate, photocopy of the residence status and photocopy of the medical certificate of the students concerned.

It is the case of the petitioner-institute that on account of the respondents having adopted the online method, the list was not properly uploaded. The roll numbers were not issued when the examinations were to take place in October, 2015, and the dispute arose. It is the case of the petitioner-institute further that the examinations forms subsequently alongwith the requisite fee of ₹31,500 was deposited with the respondent-council by way of demand draft, but the roll numbers were not issued on account of the fact that respondent-council had failed to upload the forms which it had already received vide the letter dated 28.11.2014 (Annexure P-2).

The defence of the respondent-council is that the Principal of the petitioner-institute had given in writing on 30.10.2015, which is after the interim order passed by this Court that admission forms have never

been submitted before and, therefore, the students had been admitted after the cut-off-dates. The admission forms and examination forms have now been submitted on 30.10.2015 and demand draft dated 28.11.2014 was never encashed. There was no record available with the respondent-council regarding the students, therefore, the roll numbers were not issued. Reliance was also placed upon one report dated 31.03.2015 (Annexure R-1), which was the self appraisal form filled up by the Principal of the petitioner-institute that there was no admission in the ANM 1st and 2nd year for the session 2014-15. Resultantly, dismissal of the writ petition was prayed for.

The petitioner-institute in its replication took the plea that due to inadvertence the column against ANM was left blank as the ANM students were on clinical/field training and not coming to the institute campus. The institute was inspected by the respondent-council in June, 2015 and the entire record was checked and verified. At that point of time 30 students were studying in the institute. Reliance is placed upon the photocopy copy of the attendance register, clinical training register and record of the home visits by these students (Annexure P-8). Reliance was also placed upon the renewal of its affiliation with the Indian Nursing Council to submit that a certificate had been issued by the respondent-council, wherein the factum of 30 students of the ANM Course was also mentioned and had been duly endorsed by the respondent-council. Resultantly, application form dated 12.01.2015 (Annexure P-9) was referred to, to show that 30 students were studying

on 12.01.2015. The factum of non-encashment of demand draft dated 28.11.2014 had been got verified from the Oriental Bank of Commerce that the bank draft had remained unpaid. It has further been certified by the bank that the demand draft had not been returned by the party for cancellation.

Counsel for the petitioner, accordingly, submits that there are sufficient grounds to confirm the interim order, in view of the above facts.

Counsel for the respondent-council on the other hand had relied upon the report dated 24.08.2016, which has been submitted by the Registrar of the respondent-council, in pursuance of the orders dated 08.07.2016 passed by this Court, which has also been objected to by the petitioner by filing an appropriate application.

After hearing counsel for the parties, this Court is of the opinion that the writ petition is liable to be allowed. The reasons which prevail with this Court are mainly that it has been admitted by the respondent-council that it is in custody of the demand draft dated 28.11.2014 bearing No.653051 amounting to ₹30,000/-, which was the amount of admission fee (Annexure P-4). The said demand draft also finds mention in the report, apart from the reply of the respondent-council. The council has not justified as to how it came into the possession of the said demand draft. It is the categorical case of the petitioner-institute that it was on account of the admission fee to which the demand draft had been submitted. The case of the petitioner-institute

is that the last date was extended upto 15.11.2014 and, therefore, the documents had to be completed by 01.12.2014 and the demand draft had been submitted prior to that. Therefore, the arguments of the counsel for the respondent-council that these admissions have been made after the cut-off-date does not cut any ice with this Court. The fact remains that it is in possession of the demand draft which is dated prior to the cut-off-date of completion/submission of documents, though not encashed.

Secondly, it is to be noticed that in the inspection report which has been conducted by the Inspector of the Nursing Council, the presence of the 30 students has been noticed. As per the attendance register (Annexure P-8), the endorsement is dated 29.06.2015. Therefore, it cannot be said that the students were not on the rolls of the petitioner-institute and for the first time their names have been put forth while seeking admission on the deposit of the admissions forms in September, 2015. It is also matter of record that the admission forms were duly accepted and the amount of ₹31,500/-, which was given by way of two demand drafts had been duly encashed in September, 2015 by the respondent-council. The dispute as such regarding the illegalities of the 30 students, would necessarily have been communicated to the petitioner-institute as to the ambiguity in their admission, but there is nothing on record to show any such action was taken by the respondent-council.

Another factor which weighs with this Court is that on 12.01.2015 (Annexure P-9), the petitioner had applied for renewal/validity of its affiliation with the Indian Nursing Council. Under

clause-9 of the application form there is a mention of 30 students against the ANM Course. The said application has been duly certified by the then Registrar of the respondent-council. In such circumstances, in the absence of the admission forms having not been received by the respondent-council, the question of the Registrar certifying the said application forms would not have arisen. It is, thus, apparent that the petitioner is well justified in approaching this Court on account of the non-issuance of the roll numbers.

Accordingly, the writ petition is allowed. The interim order dated 29.10.2015 is confirmed, subject to the payment of ₹31,500/-, if not already made, since it was a common ground of the parties that demand draft of ₹31,500/- has not been encashed. The students will be entitled for declaration of the result and entitled to continue in the course. The supplementary examination wherever required, since the students had missed two examination, will accordingly be permitted to be given by them.

OCTOBER 03, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No