

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

Date of decision: 27.02.2016.

(1)

LPA No. 1729 of 2015 (O&M)

Aarti and others

.....Appellants.

Versus

Pt. B.D. Sharma University of Health Science, Rohtak and others

.....Respondents.

(2)

LPA No. 1166 of 2015 (O&M)

Aarti and others

.....Appellants.

Versus

State of Haryana and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

Present: Mr. Jangjit Singh Dahiya, Advocate, for the appellants in both the appeals.

Mr. Ramesh Hooda, Advocate, for respondent No. 1 in LPA No. 1729 of 2015 and for respondent No. 2 in LPA No. 1166 of 2015.

Ms. Tanisha Peshawaria, DAG, Haryana, for respondent No. 2 in LPA No. 1729 of 2015 and for respondent No. 1 in LPA No. 1166 of 2015.

Mr. Amrit Pal, Advocate, for respondent No. 3 in LPA No. 1729 of 2015 and for respondent No. 4 in LPA No. 1166 of 2015.

Mr. Munish Jolly, Advocate, for respondent No. 4 in LPA No. 1729 of 2015 and for respondent No. 3 in LPA No. 1166 of 2015.

Mr. Kapil Kakkar, Advocate, for respondent No. 5-Institute in both the appeals.

S.S. SARON, J.

This order will dispose of LPA No. 1729 of 2015 titled 'Aarti and others versus Pt. B.D. Sharma University of Health Sciences, Rohtak and others' and LPA No. 1166 of 2015 titled 'Aarti and others versus State of Haryana and others'.

LPA No. 1729 of 2015 has been filed by appellants-Aarti and others against the order dated 29.07.2015 passed by the learned Single Judge in CWP No. 26472 of 2014 whereby the petition filed by the Rural Nursing Training Institute, Sonapat ('Institute' - for short) (respondent No. 5 in both the appeals) seeking quashing of the order dated 28.11.2014 by which Pt. B.D. Sharma University of Health Sciences, Rohtak ('Pt. B.D. Sharma University' - for short) (respondent No. 2) declined the request of respondent No. 5-Institute for extension in provisional affiliation for B.Sc. Nursing and Post Basic B.Sc. Nursing Courses being run by the said Institute, has been dismissed.

LPA No. 1166 of 2015 has also been filed by appellants-Aarti and others against the order dated 04.08.2015 passed by the learned Single Judge in CWP No.15937 of 2015 whereby the petition filed by the said appellants to permit them to appear in the examination of B.Sc. Nursing 1st year and Post Basic B.Sc. Nursing 1st year that was scheduled to be held from 05.08.2015, has been dismissed. The dismissal of the said writ petition vide order dated 04.08.2015 is in consequence of the order dated 28.11.2014, passed in CWP No. 26472 of 2014, which has been assailed in LPA No. 1729 of 2015. Therefore, both the appeals are being disposed of

by a common order. The facts, however, are taken primarily from LPA No. 1729 of 2015.

Respondent No. 5-Institute is a Nursing Institute which conducts courses in B.Sc. Nursing and Post Basic B.Sc. Nursing with thirty seats and twenty seats, respectively, for the said courses. It was set up by the Rural Institute of Health and Para Medical Science in the year 2013. The Institute commenced its courses in B.Sc. Nursing and Post Basic B.Sc. Nursing from the session 2013-14 onwards. Apart from said courses, it also imparts education in General Nursing Midwifery ('GNM' - for short) for forty seats and Auxiliary Nursing Midwifery ('ANM' - for short) for thirty seats. The Indian Nursing Council ('Nursing Council' - for short) (respondent No. 4) accorded necessary recognition to respondent No. 5-Institute for B.Sc. Nursing and Post Basic B.Sc. Nursing Courses for the session 2014-15. The Haryana State Nurses Registration Council ('Haryana Council' - for short) (respondent No. 3) also accorded approval to respondent No. 5-Institute vide order dated 22.09.2014, for the session 2014-15. Respondent No. 5-Institute, however, did not possess approval/affiliation of the Pt. B.D. Sharma University for the session 2014-15 although it had necessary approval of the Nursing Council and Haryana Council, respectively. Therefore, the action of Pt. B.D. Sharma University of not granting affiliation to respondent No. 5-Institute was assailed by the latter by way of a writ petition i.e. CWP No. 26472 of 2014 in this Court, which as already noticed was dismissed and the order dismissing the writ petition is under challenge in the present appeal.

The question regarding affiliation by a University after approval had been given to run a Nursing Institute by the Nursing Council was considered by a Division Bench of this Court in **Shiv Shakti Educational Society (Regd.) v. State of Punjab and others, 2008 (1) SCT 691**. The following questions were considered by the Division Bench:

- (i) Whether approval of the INC (Indian Nursing Council) was required for making admissions?
- (ii) Whether the University could decline affiliation after approval has been granted by the INC?
- (iii) Whether the State Government or the State Nursing Council could allow admissions to be made for B.Sc Nursing Course in absence of there being approval by the INC or affiliation by the University?
- (iv) Whether the petitioner was entitled to make admissions when the University had not granted affiliation and the State Nursing Council had declined to extend recognition?
- (v) Whether added respondent Nos. 5 to 8 could have been allowed to make admissions?

Amongst these, the question whether the University could decline affiliation after approval had been granted by the Nursing Council, is relevant for the present case. In regard to question (i), it was held that neither the course could commence nor admissions could be made without permission of the Nursing Council, approval of the State Nursing Council

and the University and 'no objection' from the State Government. The petitioners in the said case having not been given approval by the University and the Nursing Council, it was held, could not be allowed to make admissions. As regards question (ii), which is the relevant question for the present case, it was held that the University could decline affiliation after approval had been granted by the Nursing Council. The Nursing Council, it was held, though was not debarred from laying down appropriate mechanism for taking a final decision on the objections to the affiliation where the approval of the Nursing Council had been given in a time bound manner. The contention that the affiliation by the University after approval had been granted by the Nursing Council was a mere formality, it was held, could not be upheld. The Indian Nursing Council Act was held to be a special statute for nursing education. It was further held on the analogy of the case **State of Maharashtra v. Sant Dayaneshwar Shikshan Shashtra Mahavidyalaya and others (2006) 9 SCC 1** that the field of nursing education was fully occupied by an Act of the Parliament and the regulations did not say that affiliation by a University must follow the approval by the Nursing Council. In the absence thereof, the University could make its own assessment and was not bound by the assessment of the Nursing Council. At the same time, the Nursing Council to support its stand that affiliation by the University was a formality was liable to either frame a regulation to that effect or evolve a mechanism to deal with objections of the University in its inspection. There would be nothing wrong with a single window system being worked out by the Nursing Council with the Nursing Council as a nodal agency and

laying down mechanism to deal with any genuine objection of the University in a time bound manner. In fact, doing so, it was held, was an obligation of the Nursing Council and failure to do so may create chaos by requiring educational institutions to remain without any proper forum against an unreasonable stand of a University in a given case. In response to question (iii), it was held that the State Government or the State Council could not be allowed to make admissions for B.Sc. Nursing in the absence of approval from the Nursing Council or the affiliation by the University. In view of answer to question (ii), the question (iv) was decided against the petitioner -Shiv Shakti Educational Society (Regd.) in the said case. In view of the answers to questions (i) and (iii), with regard to question (v), it was held that it had to be answered against the private respondents. The conclusions were summed up as follows:

“(i) The Central Act having laid down procedure for making admissions as per regulations framed under section 16, the said procedure was binding on all concerned for admissions to B.Sc Nursing. In other words, an institution was required to obtain No Objection/Essentiality Certificate from the State Government, get an inspection done from the INC for permission to start the programme, get approval from the State Nursing Council and the Examination Board/University, before admissions were made. The view taken by a Single Bench of this Court in Mata

Amrit Kaur Welfare Trust (supra) (i.e. CWP No. 837 of 1991 decided on 23.05.1991) will stand overruled.

- (ii) There is no prohibition in the regulations framed by the INC to a University declining affiliation even after INC has given permission for starting a programme. In fact, the regulation itself lays down that even after permission of the INC, the institution has to get approval of the University before making admissions. The view taken by a Single Bench of this Court in Dr. Shyam Lal Thapar Nursing Foundation (supra) (i.e. 2006 (2) SCT 729) will stand modified accordingly.
- (iii) The INC was competent to lay down a procedure to cross check refusal of affiliation by a University and in fact it is desirable for the INC to lay down such a procedure to check arbitrariness and to avoid delay.
- (iv) The petitioner was not entitled to a direction for grant of affiliation but could apply for fresh inspection to the University or to the INC and thereafter to take its legal remedies. The INC will take decision in accordance with law, within two months from the date of receipt of a copy of this order.
- (v) Added respondents were not entitled to make admissions as the State Government or the State Nursing Council was not entitled to give such a permission without prior approval of the INC and affiliation by the University.

The said respondents are restrained from making admissions without approval from the INC and affiliation by the University.”

It was also observed that there could not be a dispute that normally Courts should not interfere with the functioning of the educational institutions, particularly, expert bodies like the Medical Council of India or the Dental Council of India. Still, however, the question was posed that if such bodies act arbitrarily for some ulterior purpose, whether the Court had the power to set right such arbitrary exercise of powers by such authorities. The answer to the question was held to be in the affirmative.

The dispute raised by the appellants is with regard to not granting affiliation to the respondent No.5 - Institute for no fault of theirs. As regards not granting affiliation to respondent No.5 - Institute, it is to be noticed that the Pt. B.D. Sharma University on 12.05.2014 issued a notice to respondent No. 5-Institute that the said Institute would be inspected for extension in provisional affiliation for B.Sc. Nursing 2nd year with thirty seats and for Post Basic B.Sc. Nursing 2nd year with twenty seats. Respondent No. 5-Institute was inspected and a show cause notice was issued by the Pt. B.D. Sharma University on 09.07.2014 conveying the deficiencies. Respondent No. 5-Institute submitted its compliance on 31.07.2014. The deficiencies, as pointed out and the compliance thereof are as follows:

Deficiencies	Compliance
1. Permission from HNRC (i.e.	1. The matter is under

Deficiencies	Compliance
Haryana Nursing Registration Council), Chandigarh is not available for the session 2014-15.	correspondence with HNRC, Chandigarh and we will get the permission very soon. Moreover, we have already attained HNRC permission for the session 2013-14, the copy of which is being enclosed herewith shown at Flag 'A'. The request letter for the affiliation session 2014-15 is also enclosed.
2. Principal and six other staff members need to be registered with HNRC.	2. The migration of principal and six other members is also in the process as the photocopy of their fee deposition with HNRC are being attached herewith for your kind ready reference. We will complete the process within a due course of time.
3. Payment of staff needs to be by Bank transaction	3. We have started giving salary to the staff members through cheques from the previous month.
4. BPS Govt. College (50 bedded) General Hospital, Sonapat (100 bedded) Cygnus JK Hindu Hospital (60 bedded) have given permission for training of students of nursing. But college has not deposited fee for training as fee slip was not attached. The B.Sc. Nursing and Post Basic B.Sc. Nursing students were not specified in the permission letter. As per communication with students	4. Last year we could get the affiliation permission from your university only on 31.10.2013 and we could not arrange Clinical Training B.Sc (N) & PB B.Sc. (N). Later on, we sent our 15 nursing students in GH, Sonapat and also remaining in Cygnus Hospital, Sonapat. An amount of Rs.45,000 DD No.2316/2 and Rs.30,000/-DD No. 231672 Total Rs.75,000/-(Each

Deficiencies	Compliance
B.Sc. Nursing and Post Basic Nursing they have not attended any clinical areas till date. Only 50% students of B.Sc. Nursing were present on the day of inspection but their register showed approximately 98% attendance daily.	student Rs.5000/- per month) has been remitted to Civil Surgeon, Sonapat. The photocopy of the deposition /DD is attached.
5. Attendance register of students reflected that they have clinical classes but students in class told that they have not gone in any clinical class/areas. As per statement of principal the total students in B.Sc. Nursing are 22, list shows 27, and attendance register shows 25.	5. Our students in general are sent to GH, Sonapat, Cygnus hospital and other some specialty hospitals for getting clinical training at due intervals of time. The total strength of the B.Sc (N) students is 22 but 5 of them have dropped out by the time of your inspection.
6. Faculty register seems to be filled by one person, signatures of most of the faculty members were not matching with signature in register shown to us at the time of inspection.	6. All the members of teaching faculty were present at the time of inspection. The omission and commission in the signatures may have occurred due to some carelessness which may kindly be overlooked.
7. Hostel arrangements were not found adequate and furniture lying in the corridor seems to be meant for school kids.	7. We have improved the hostel arrangement after the inspection. The unwanted furniture lying in the corridor of the hostel was removed in compliance of your instructions. Moreover, our hostel is well spacious and well equipped with all facilities as required by the INC norms.

Deficiencies	Compliance
8. All the previous deficiencies for the session 2013-14 were same.	

Respondent No. 5-Institute was then on 14.08.2014 issued a second show cause notice to which respondent No. 5 submitted its compliance/reply on 08.09.2014. The deficiencies, as pointed out, and the compliance thereof are as follows:

Deficiencies	Compliance
1. Permission from HNRC for the session 2014-15 is not available.	1. The Haryana Nursing Council has fixed up an inspection scheduled to take place on 9 th Sept.2014 for giving the permission to enroll the students for the session 2014-15 as per INC specification a photocopy HNC Chandigarh inspection letter is being attached for your kind ready reference as Annexure 'A'.
2. Proof of payment of staff salary through bank transaction is required	2. Following your instructions we have started paying salaries to the teaching faculty members through Bank. In support of our statement we are attaching the Bank authority certificate as Annexure 'B'.
3. Arrangement of Clinical Classes, Attendance of students in the register was shown up to 98% but on the day of inspection only 30% students were present	3. Prior to the inspection the total strength of B.Sc (N) students enrolled for their training was 27 but by the time of inspection it had reduced to 21 because of leaving the course by 6 students. Besides it 3

Deficiencies	Compliance
	students out of 21 were absent on inspection day. However, 18 students were actually present on the day of inspection. The detail of 3 absentees is also enclosed as Annexure 'E'. It seems that the inspection team has calculated the students presence on the basis of 27 students establishing it 50% presence as per your letter. While in your earlier letter it was shown 50%. (While in your earlier letter it was shown 50% -sic.).
4. As per statement of students at the time of inspect they have never gone to any clinical class.	4. We could get the affiliation permission for the session 2013-14 at a very delayed stage that is why we had to remain awfully busy in completing the theory courses of the students. Due to the scarcity of time we could not arrange their clinical classes. Later on just after your inspection, we prepared the clinical rotation plan for students' and deployed them to participate in the clinical classes. The situation thus created is deplored with the assurance that the occurrence of such slackness would never be revived in future. The copy of roster plan as well as the amount deposited proof with Govt. trg. Agency are

Deficiencies	Compliance
	shown as Annexure 'C' and 'D'.
5. Faculty register seems to be filled by one person, signature of most of the faculty members were not matching with signature in register shown to the team at the time of inspection.	5. We admit some lapse noticed by the Inspecting team our teaching faculty members have committed mistake in marking presence in the attendance register. It is presumed that they have done it in a state of hurry associated with confusion. We feel sorry over this instance and make a humble request to overlook this incidence engaging it under the provision of omission and commission.
6. Hostel arrangement were not found adequate and furniture laying in the corridor seems to be meant for school kids.	6. Our hostel building is entirely constructed according to the INC norms. We have reformed all shortcomings which the team pointed out within no time. The adequate and congenial arrangements have been made as per team guidance. The unwanted furniture lying in the corridor of the hostel was also removed there and then.
7. All the previous deficiencies for the session 2013-14 were same.	7. In the last we request you that in future we would leave no stone unturned in the implementation of your guidance to be issued by the University time to time in

Deficiencies	Compliance
	discharging the training programmes.

Then, another show cause notice was issued by Pt. B.D. Sharma University on 18.09.2014 which, it is submitted, is in comparison to the show cause notice issued on 09.07.2014. The fresh deficiencies that were pointed out were as follows:

“1. *Permission from H.R.N.C. is not available.*

The original deficiencies detailed from No. 2 to 8 are no longer there and following 3 fresh deficiencies have been pointed out:

2. *Schedule for clinical classes of students was shown to the team at the time of inspection but students were not going to classes this reflects that classes are going on papers only.*
3. *Faculty members should mark their attendance daily not just before inspection. Mistake in attendance register can be one or two days not daily.*
4. *Furniture of kids school present in corridor and most of the rooms were locked and not shown to the committee at the time of inspection. This indirectly reflects that this building can be of a school.”*

Respondent No. 5-Institute again submitted its compliance report on 30.09.2014 in a tabulated form as follows:

<u>Deficiencies</u>	<u>Compliance</u>
1. Permission from HNRC is not Available.	1. Permission of HNRC is attached.
2. Schedule for clinical classes of	2. We have already submitted the

<u>Deficiencies</u>	<u>Compliance</u>
students was shown to the team at the time of inspection but students were not going to classes this reflects that classes are going on papers only.	evidence with DD proof that our students have taken clinical classes and clinical plan, was also enclosed for your kind reference.
3. Faculty members should mark their attendance daily not just before inspection. Mistake in attendance register can be of one or who (sic. two) days not daily.	3. We have given the stern warning to the faculty member who are engaged in teaching to mark their presence in the attendance register.
4. Furniture of kids school present in corridor and most of the rooms were locked and not shown to the committee at the time of inspection. This indirectly reflects that this building can be of a school.	4. Following your guidelines we have improved the facilities to be provided to the hostel students up to a required level. We have also elevated the whole system of the hostel. The undesired furniture was also removed from the corridor of the hostel. Some photos are attached for clearance of the picture.

The Pt. B.D. Sharma University then appointed Smt. Om Devi as University Observer to attend the Counselling of B.Sc. Nursing and Post Basic B.Sc. Nursing Courses on 09.10.2014 for the session 2014-15. The Counselling for the said two courses for thirty seats of B.Sc. Nursing and seventeen seats of Post Basic B.Sc. Nursing was to be held in the premises of respondent No. 5-Institute in the presence of University Observer on 13.10.2014. The University Observer Smt. Om Devi came back without admitting the students as respondent No. 5-Institute did not have

provisional affiliation from the University. The Pt. B.D. Sharma University also made a surprise inspection on the same day, i.e. on 13.10.2014. After inspection, fresh and new deficiencies were pointed out to respondent No. 5-Institute on 28.10.2014 to which compliance was submitted on 29.10.2014, which are as follows:

Deficiencies	Compliance
1. The institute has already admitted 41 students in B.Sc. Nursing 1 st year 2014-15 and students are attending classes for last 2 months, while there was no affiliation granted from UHSR for session 2014-15.	(a) The number of 41 students pointed out in your letter were called by us to attend counseling process fixed by the Honorable university on 13 August, 2014 and admitted in the presence of University observer Smt. Om Devi.
2. New Principal was appointed and she was also on long leave and in her absence charge is given to a faculty member with 2 years working experience.	(b) The Principal was actually on long leave due to her domestic problem. Meantime, she was served with a notice to join her job immediately otherwise we would be constrained to appoint a new principal through advertisement by giving in the news paper.
3. 12 faculty members were enrolled out of them, 8 faculty members were not eligible to do any kind of Nursing job because their result of final examination (4 th year) is not declared and they are not registered with the State Nursing Council to do work as Nurse. The name of these members were Ms.	(c) Your office has wrongly mentioned the number of faculty members showing them 12 while the actual figure was 24. Out of 24, 12 members claimed in your letter was not a correct figure. The actual number of members was 8. They were accommodated on a probation period of three months on a lump

Deficiencies	Compliance
Sujata and Mrs. Mohini. As per authorities two members have gone with students for clinical classes but their attendance was not marked. Only three members were present at the time of inspection (Mrs. Rebecca, Mrs. Anupama, Mrs. Monica, Mrs. Sakshi).	sum salary of Rs.10,000/-per month. It is also wrong to say that there were only 3 faculty members were present on the day of inspection as 4 members Mrs. Rebecca Ms. Anupma, Ms. Monika and Ms. Sakshi were present. Teaching faculty required for Nursing College is complete as per INC norms.
4. B.Sc. Nursing 2 nd year students were not present and it was informed that they have gone for clinical classes with two faculty members. While there was no clinical rotation plan was available in the college.	(d) At the time of inspection, it was informed to the team that B.Sc. Nursing 2 nd year students had gone for clinical classes. However, it is absolutely wrong to say that there was no clinical plan available in the College. It was there and was shown to the inspecting team on its demand there and then. We are astonished that the team is bent to deny the fact. A copy of the said plan is attached herewith for your ready reference.
5. Attendance register of B.Sc. Nursing 2 nd year reflected that absent columns are left blank for weeks together. Register also showed that 2 nd October and 8 th October were working days. Although these days were gazetted holidays for UHS.	(e) It is admitted that the attendance register of B.Sc. Nursing (columns) were lying blank. The incharge teacher Ms. Anju was served a notice to get the deficiency removed for future time. On the occasion of 2 nd October. The Mahatma Gandhi Jayanti the school was opened to solemnizing the cleanliness day. On 8 th October 14,

Deficiencies	Compliance
	similar ceremony was also arranged.
6. Principal room shown was probably room of director or some other society members with attached bedroom. Principal room shown during last inspection was perhaps related with high school running in the same building.	(f) Principal room has not been altered at any occasion. It remained the same as already inspected.
7. There was no mess in the hostel, only a kitchen was present in which food was available. The food is taken to their rooms by students. There is no sitting place in the mess.	(g) We have been maintaining the mess facility since the start of our hostel but this subject was never pointed out by any inspection team earlier. However, the alteration is being made.
8. Hostel building was present where 6 to 7 students were staying in one room. Only 1 or 2 chairs were available in each room. Utensils were present in student's room probably to carry food in their rooms.	(i) As claimed by the inspection team, it is admitted that 6 to 7 students were accommodated in one room but the size of our room is enormous and the space available for one student required as per INC norms is rather more than the required by the student. One chair and one table is available for each student in the hostel.

According to respondent No. 5-Institute, the Pt. B.D. Sharma University wanted to harass it by pointing out fresh deficiencies. A reference was also made to two of the members being biased against it as they were lecturers in the University's own Nursing College, which was a

competing institute for it and was at a distance of approximately 40 kilometers from it.

During pendency of the writ petition, the learned Single Judge passed the following order on 28.05.2015:

“The parties are ad idem that the Institute may be inspected by the Indian Nursing Council, associating the nominee of the University, to find out as to whether the deficiencies pointed out by the University have been removed or not.

Let the inspection be carried out on any day between 02.06.2015 to 10.06.2015. The petitioner shall deposit the necessary expenses for inspection with the INC by 2nd June, 2015.

In the meantime, the petitioner-institute may submit the examination forms of the students to the University with late fee which shall be accepted by the University provisionally, under the order of this Court and shall process them after an order is passed on 03.07.2015.”

Later on, order dated 14.07.2015 was passed, which is as follows:

“The petitioner-institute has been inspected by the University and the Indian Nursing Council. At present, counsel for the University has got the proforma only filled by the Inspection Committee, in respect of the facilities provided by the petitioner-institute, but he is unable to apprise the Court with regard to the conclusion drawn by the Inspection Committee. It is submitted that if a short adjournment is granted, the conclusion drawn by the Inspection Committee would also be placed before this Court.

On his request, adjourned to 23.07.2015.

In the meantime, the University is directed to place on record the expert opinion, on the inspection report, on or before the next date of hearing and shall also apprise the Court about the parameters required to be maintained by the petitioner-institute for seeking affiliation, over and above the parameters laid down by the Indian Nursing Council."

The learned Single Judge noticed the shortcomings of the University and dismissed the writ petition. It was observed that at the time of granting provisional affiliation for the session 2013-14, the Pt. B.D. Sharma University had pointed out certain discrepancies/deficiencies, which were as follows:

- "1. Principal was absent on the day of inspection.*
- 2. Faculty who were M.Sc. (Nursing) need to be registered under HNRC.*
- 3. Sweta Yadav, Nursing Tutor, was absent on the day of inspection.*
- 4. Hostel for student capacity needs to be increased.*
- 5. Payment of staff needs to be by bank transaction."*

It was noticed that the dispute started when respondent No. 5-Institute asked Pt. B.D. Sharma University for extension of provisional affiliation for the session 2014-15. Recognition had been granted by the Nursing Council and Haryana Council. However, Pt. B.D. Sharma University time and again served notices upon respondent No. 5-Institute highlighting the deficiencies/discrepancies, which allegedly were removed/complied with by respondent No. 5-Institute. Ultimately on 28.11.2014, respondent No. 5-Institute was informed by the Pt. B.D. Sharma University

that the last date for admissions to the Nursing Courses for the session 2014-15 was already over, therefore, admissions could not be allowed until and unless the last date was extended by the Nursing Council and, hence, re-inspection could not be allowed. The re-inspection, as already noticed, was allowed by this Court vide order dated 14.07.2015. The re-inspection was carried out by the Nursing Council with the association of the nominee of the Pt. B.D. Sharma University in order to find out as to whether the deficiencies pointed out by the Pt. B.D. Sharma University had been removed or not by respondent No. 5-Institute. Respondent No. 5-Institute at that time was allowed to submit examination forms of the students (now appellants), which were to be accepted by the Pt. B.D. Sharma University provisionally. The processing thereof was, however, deferred. The inspection team submitted its report to the Pt. B.D. Sharma University pointing out that the deficiencies which were required to be removed were still to be complied with before affiliation was extended. Respondent No. 5-Institute though represented that the objections pointed out in the report dated 20.07.2015, were not met/removed but had given a list of the faculty to the Court. It was found, however, that Aisha Qureshi, Dean-cum-Principal joined respondent No. 5-Institute on 27.02.2015 and had not been registered with the Haryana Council. A Nursing Tutor namely Renu Kumari was a fresher on 04.06.2015. Ms. Seema Rani joined as Nursing Tutor on 04.06.2015. Shweta joined as Nursing Tutor in February, 2015. Anamika and Mamta joined as Nursing Tutors on 01.04.2015. Reena joined as Clinical Instructor as a fresher on 02.03.2015. Pooja and Neelu joined as Clinical Instructors on 01.05.2015, whereas Bhawna, Renu, Sunil,

Anita and Mamta joined as Clinical Instructors on 01.05.2015. It was found that there were other deficiencies regarding the ratio of the students in the hostel rooms, i.e. 3-5 students in a room of the size of 10' x 12', whereas a minimum requirement according to the Nursing Council was that it would be ideal for two students with the minimum 100 sq. ft. carpet area. The writ petition was accordingly dismissed.

During the pendency of the appeal, learned counsel appearing for the parties are *ad idem* that necessary affiliation has now been granted by the Pt. B.D. Sharma University for the session 2015-16 vide letter dated 20.10.2015 wherein it is mentioned that the assessment team visited the college on 05.05.2015, to physically verify the feasibility and infrastructure for granting extension of provisional affiliation for B.Sc. Nursing 3rd year course with an intake of twenty seats for the session 2015-16. The assessment team in its report had pointed out that some deficiencies were conveyed to respondent No. 5-Institute. The compliance report was submitted by respondent No. 5-Institute vide letter dated 05.10.2015, which had been considered by the competent authority and had been found to be satisfactory. The authority allowed the grant of extension in provisional affiliation for B.Sc. Nursing 3rd year course with an intake of thirty seats and Post Basic B.Sc. Nursing Course with an intake of twenty seats for the session 2015-16 in anticipation of approval of the Academic Council subject to submission of approval from Haryana Council.

This Court in the case of '**Mahabir Educational Welfare Society v. The Haryana State Counselling Society and others**', CWP No. 17355 of 2013, decided on 18.09.2014, held that after filing of the

petition, the Haryana State Board of Technical Education had granted provisional affiliation for the academic year 2014-15 for 2nd shift diploma programme vide letter dated 18.07.2014. The challenge in the said writ petition was to the refusal to consider affiliation of the diploma programme for the year 2013-14. Through interim order dated 14.08.2013, the Court allowed the college to make admission and also permitted the respondents to make inspection and in case of deficiency, approval could be denied. It appeared that no final order had been passed on the inspection undertaken and in the meanwhile the requirement for securing affiliation to the session 2014-15 had come up. It was held that the affiliation could have been granted only on being satisfied with the facilities/requisite requirements and it ought to prevail as a circumstance for legitimizing the admission made for the session 2013-14 as well.

In the present case, the inspection of the college while granting affiliation was conducted on 05.05.2015, which was somewhat at the same time when the inspection, on the basis of which affiliation was declined, was conducted. The various deficiencies raised by the Pt. B.D. Sharma University and the compliances submitted by respondent No.5 - Institute, as have been noticed above, would show that fresh objections and deficiencies were raised at each inspections that were conducted, besides, some of the deficiencies that were raised were not such that would affect the nursing course being pursued by the appellants. These were more in the nature of facilities and shortcomings in the material except for those relating to the tutors which has now in any case being regularized with the subsequent affiliation granted to respondent No.5 – Institute by the

Pt. B.D. Sharma University. It is also apposite to note that at one stage i.e. vide letter dated 28.11.2014 the Pt. B.D. Sharma University had only declined the affiliation to respondent No.5 - Institute for the 2014-15 Session as the last date for admissions to the nursing courses was already over. In these circumstances, it cannot be said that the appellants were in any manner at fault although the conduct of respondent No.5 - Institute may have been wanting. Therefore, for the lapses on the part of respondent No.5 – Institute, the appellants are not liable to suffer especially when they have or in any case most of them have successfully completed their B.Sc. Nursing Ist year or Post B.Sc. Nursing Ist year as the case may be. In these circumstances, the affiliation for the respondent No.5 - Institute is liable to be granted by the Pt. B.D. Sharma University for the session 2014-15.

Mr. Ramesh Hooda, learned counsel appearing for the Pt. B.D. Sharma University though has objected to the affiliation being granted on a subsequent date and making it applicable to an earlier year, but he does not seriously dispute that there is no fault of the students, who are the appellants. It is also not in dispute between the parties that the students have already appeared in the 1st year of the B.Sc. Nursing and Post Basic B.Sc. Nursing Courses.

Learned counsel for the appellants has submitted certificates during the course of hearing of most of the candidates whereby it has been certified that they have successfully completed their practical training from Government Hospital, i.e. BPS Govt. Medical College for Women, Khanpur Kalan (Sonapat) and certificates have been issued by the Medical Superintendent, BPS GMC (Women), Khanpur Kalan (Sonapat). It is

submitted that those students who have not been able to successfully complete their practical training have not been declared successful in the examinations.

Mr. Ramesh Hooda, Advocate, and Mr. Manish Jolly, Advocate, submit that since the students are not at fault, respondent No. 5-Institute should be penalized so that it does not continue with this illegal practice and activity.

Mr. Kapil Kakkar, Advocate, appearing for respondent No. 5-Institute submits that the students are paying only examination fee of Rs.5,000/-per month, i.e. Rs.60,000/-per annum, which is taken from the students and no other expenses are taken.

Be that as it may, it is quite unfortunate for the students to suffer merely for the lapse on the part of respondent No. 5-Institute. Therefore, equity would be that in case the appellants have passed their examinations, their results should be declared. However, at the same time respondent No. 5-Institute shall pay a sum of Rs.5,00,000/-(Rs. Five lac only) to the Pt. B.D. Sharma University, which shall deposit the same in its Students' Welfare Fund and use the money for the welfare of the students. The admissions of the appellants shall stand regularized.

Accordingly, LPA No.1729 of 2015 is allowed and the impugned order dated 29.07.2015 passed by the learned Single Judge in CWP No.26472 of 2014 is set aside and the order dated 28.11.2014 passed by the Pt. B.D. Sharma University is quashed and the University shall grant affiliation to respondent No.5 - Institute for the Session 2014-15 for the B.Sc. Nursing and Post B.Sc. Nursing; and LPA No. 1166 of 2015 is

allowed and order dated 04.08.2015 passed by the learned Single Judge in CWP No. 15937 of 2015 is set aside and the result of the provisional examination taken by the appellants shall be declared and in case they are successful in the examination, the necessary follow up relief shall be given to them. There shall be no order as to costs.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

27.02.2016
Ramesh

Note: Whether to be referred to reporter: Yes