

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

REVIEW APPLICATION (STAMP) NO.22465 OF 2016
IN WP/8421/2015

The State of Maharashtra and others
VERSUS
Kashi Shikshan Prasarak Mandal's Sant Eknath Institute of Nursing (RGNM)
Through its Secretary, Vinod Arvindrao Gaikwad

WITH

REVIEW APPLICATION (STAMP) NO.22448 OF 2016
IN WP/8419/2015

The State of Maharashtra and others
VERSUS
Shivanjali Shaikshnik Va Samajik Sanstha's Sai Care Nursing School
(RANM & GNM), through its Principal, Navnath Bhanudas Rathod

WITH

REVIEW APPLICATION (STAMP) NO.22457 OF 2016
IN WP/8970/2014

The State of Maharashtra and others
VERSUS
Tirupati Prastishthan, Samiksha Institute of Nursing, Hingoli,
Through its Secretary, Sandeep Santaram Rabbewar

WITH

REVIEW APPLICATION (STAMP) NO.22450 OF 2016
IN WP/8412/2015

The State of Maharashtra and others
VERSUS
Shivanjali Bahhudeshiya Sanstha's Kopargaon Nursing School (RANM),
Through its Secretary, Dr. Shantanu Rangnath Pawar

WITH

REVIEW APPLICATION (STAMP) NO.22461 OF 2016
IN WP/8530/2015

The State of Maharashtra and others
VERSUS
Shiva Trust Aurangabad's Manmad Nursing School (RANM),
Through its President, Dr. Balasaheb Shivajirao Pawar

WITH
REVIEW APPLICATION (STAMP) NO.22459 OF 2016
IN WP/8531/2015

The State of Maharashtra and others
VERSUS
Sai Disha Samajik Vikas Sanstha's Pethroad Nursing School (RANM),
Through its President, Dr. Shantanu Ranganath Pawar

WITH
REVIEW APPLICATION (STAMP) NO.22463 OF 2016
IN WP/8396/2015

The State of Maharashtra and others
VERSUS
Sai Disha Samajik Vikas Sanstha's Shrirampur Nursing School (RANM),
Through its President, Dr. Shantanu Rangnath Pawar

WITH
REVIEW APPLICATION (STAMP) NO.22454 OF 2016
IN WP/8053/2015

The State of Maharashtra and others
VERSUS
Ratnadeep Medical Foundation and Research Center's Shree Sai Nursing
College (RGNM), through its President, Dr. Bhaskar Rambhau More

WITH
REVIEW APPLICATION (STAMP) NO.22467 OF 2016
IN WP/8417/2015

The State of Maharashtra and others
VERSUS
Shivanjali Shaikshanik Va Samajik Sanstha's Sheetal Nursing College
(RANM), Through its Principal.

WITH

REVIEW APPLICATION (STAMP) NO.22477 OF 2016

IN WP/8516/2015

The State of Maharashtra and others

VERSUS

R.D.F. Rural Development Society's Maharashtra Nursing School (RANM),
Through its President, Afzal Ibrahimi Momin

WITH

REVIEW APPLICATION (STAMP) NO.22474 OF 2016

IN WP/8514/2015

The State of Maharashtra and others

VERSUS

Late Prabhu Bahuuddeshiya Uvak Shvabhavi Sanstha's Vedant RGNM
Nursing School, through its Secretary, Mrs. Kanchan Satish Patil

WITH

REVIEW APPLICATION (STAMP) NO.22452 OF 2016

IN WP/8513/2015

The State of Maharashtra and others

VERSUS

Sai Baba Sevabhavi Sanstha's Dr. Ramesh Dhokne Patil School of Nursing
(RANM), through its President, Dr. Ramesh Asaram Dhokne

AND

REVIEW APPLICATION (STAMP) NO.22472 OF 2016

IN WP/8511/2015

The State of Maharashtra and others

VERSUS

Chhatrapati Shivaji Bahuddeshiya Gramin Vikas Sevabhavi Shikshan
Sanstha's Pushpai Nursing (RANM),
through its Secretary, Baban Rambhajirao Bodke

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Mrs. M. A. Deshpande, AGP for Applicants / State Authorities, in all the matters.

Mr. V. D. Hon, Senior Counsel, with Mr. C. A. Jadhav, Advocate for Respondent, in all the matters.

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CORAM : **S. V. GANGAPURWALA &
V. K. JADHAV, JJ.**

RESERVED ON : 15th SEPTEMBER, 2017.

PRONOUNCED ON: 13th OCTOBER, 2017

ORDER: (Per V. K. Jadhav, J.)

. These review applications have been filed seeking review of the order passed by this Court in Writ Petition No.8396 of 2015 and other connected writ petitions dated 13th August, 2015.

2 Brief facts giving rise to the present review applications are as follows:

The Respondents in all these review applications approached to this Court by filing the aforesaid writ petitions seeking directions to quash and set aside the communication dated 23rd July, 2014 of the Commissioner, Social Welfare and Special Assistance Department, to the extent of denying fee reimbursement of scholarship to the students of nursing courses for the years 2011-12

and 2012-13 onwards etc. This Court by order dated 13th August, 2015 as aforesaid, directed the State of Maharashtra to release the tuition fees / examination fees of the approved students of the Respondents schools for the reserved category students of Auxiliary Nursing Midwifery (hereinafter referred to as “ANM”) and General Nursing Midwifery (hereinafter referred to as “GNM”) courses admitted for the academic years 2011-12 and 2012-13.

3 The learned AGP submits that the State Government has prescribed the procedure for issuance of the Essentiality certificate vide its Government Resolution dated 21st March, 2005. After issuance of the Essentiality certificate by the State Government, the Maharashtra Nursing Council has to cause inspection through its representatives and it also empowers to hold such inquiry as deems fit for recognition of the institute for training nurses. The recognized institute also require to obtain Suitability certificate from Indian Nursing Council after passing of first batch for nurses in the said institute. The learned AGP submits that the Essentiality certificate by the State Government and the Suitability certificate from the Indian Nursing Council is mandatory for recognition. As per Government Resolution dated 21st March, 2005,

conditions 8 and 9 are prescribed. Condition 8 pertains to Essentiality certificate of the State Government and Suitability certificate by the Indian Nursing Council. Condition 9 is in respect of the procedure that after issuance of Suitability certificate by the Indian Nursing Council again permission from the State Government is necessary to be obtained for starting the aforesaid courses. Said condition 9 was challenged by way of PIL No.72 of 2013.

4 The learned AGP submits that in the aforesaid PIL, this Court has struck down condition 9 as illegal, arbitrary and violative of constitutional mandate. Consequently, the State Government has issued a Government Resolution dated 27th March, 2014 thereby made it clear that condition 9 of the Government Resolution dated 21st March, 2005 stands deleted and those institutions having Suitability certificate from Indian Nursing Council and Essentiality certificate from the State Government, are recognized. The learned AGP submits that the aforesaid Essentiality certificate and Suitability certificate are mandatory in view of the Government Resolution earlier as well as even after the law laid down by this Court in said PIL No.72 of 2013. However, this issue was not pointed out to this Court and as such, this Court has passed the order, which is the

subject matter of these review applications directing the State Government to release the tuition fees / examination fees of the Respondents / Institutions without insisting for the Suitability certificate. The learned AGP submits that the condition 9 of the said Government Resolution dated 21st March, 2005 is only struck down in the aforesaid PIL No.72 of 2013, but misinterpreting the same, the argument was canvassed before this Court that there was no necessity of the Essentiality certificate or Suitability certificate. The learned AGP submits that as per the Government Resolution dated 21st March, 2005, condition 8 prescribed the procedure for issuance of the Essentiality certificate by the State Government and the Suitability certificate from the Indian Nursing Council.

5 The learned senior counsel appearing for the respective Institutions / Respondents herein submits that the Respondents / institutes were given permission in the year 2011-12 for running the aforesaid courses as per the provisions of the Maharashtra Nursing Act, 1966. The State Government has also issued Essentiality certificate as required for conducting the nursing courses by following the due procedure. It has been also approved by the Indian Nursing Council. The Central Government has sponsored a

scheme of scholarship for the students belonging to Scheduled Caste and other backward categories. By communication dated 31st December, 2010, it has been communicated to all the States that Group 2 nursing course has been included and as such, the S.C. and other backward class students taking education in the nursing courses are entitled for the scholarship and the fee reimbursement. The State Government is only an implementing agency in respect of the aforesaid reimbursement. Further, the students belonging to V.J.N.T., O.B.C. and S.B.C. categories are also included in the said scheme for the said scholarship from the academic year 2011-12 and onwards. By communication dated 21st April, 2012, the State Government put a stringent condition and informed that only the institutions which have been duly approved and issued Suitability certificate from the Indian Nursing Council, would be entitled to apply to the State Government for final permission and it is only these institutions which would be entitled for reimbursement of fees to the students belonging to the reserved categories. Thus, the private nursing school and college management associate so also the several nursing schools had approached this Court by filing PIL No.72 of 2013, Writ Petition No.4316 of 2012 (Aurangabad Bench)

and Writ Petition No.2847 of 2013 and other connected writ petitions (Principal Seat at Bombay). This Court by judgment and order dated 9th July, 2013, struck down impugned condition 9 of the Government Resolution dated 21st March, 2005.

6 The learned senior counsel submits that in the academic year 2011-12, fee reimbursement scheme implementation was withheld as a result of which Writ Petition Nos.3052, 3054 and 3055 of 2013 were filed for grant of scholarship to the backward students who have undergone the studies for the courses for the academic year 2011-12 and 2012-13. In the said petitions, this Court has scrutinized the stand taken by the State Government and held that there is no legal basis for the stand taken by the State Government and the conditions which are impugned and challenged in the petitions cannot be sustained. The learned senior counsel submits that the challenge raised in the petition has already undergone adjudication in the aforesaid writ petitions. In spite of this, the authorities of the State Government are again trying to deny the benefits of the fee reimbursement to the students from the reserved categories.

7 The learned senior counsel submits that the Respondents / Institutes and several other nursing schools and their management approached the State Government for application of the fee reimbursement scheme from the academic year 2011-12 and inspite of the same, the Secretary Medical Education and Drugs Department by impugned communication has made applicable the fee reimbursement scheme from the academic year 2014-15 and thereby denied the benefit of fee reimbursement from the academic years 2011-12, 2012-13 and 2013-14. The Respondents therefore, had brought to the notice of the concerned authorities the aforesaid orders passed by his Court in the aforesaid PIL and other writ petitions. The State Government has accordingly, considered the representation and instead of giving the benefits from 2011-12, the earlier order has been modified which was applicable from 2014-15 and made applicable the said scheme of reimbursement from the academic year **2013-14**. The State Government has thus, denied the lawful claim of the students from the reserved categories who are entitled for the benefits of fee reimbursement for the academic years 2011-12 and 2012-13 i.e. two years.

8 The learned senior counsel submits that as per the

permission given by the authorities for the academic year 2011-12, the students have already put the terms and their examination forms have been accepted and they have also filed online forms for fee reimbursement. Though the said forms are pending with the State Government and in view of the impugned communication, the students were deprived the benefits of fee reimbursement for the academic years 2011-12 and 2012-13 whereas the students admitted in the academic year 2013-14 and 2014-15 would get the benefits. The students who are admitted for the academic year 2011-12 and continued their education, therefore, would be denied the benefits and they would be discriminated as the students admitted to the subsequent years would be getting the benefits. There is no reasonable basis for making any such discrimination as the students are equally placed and they are entitled for the same treatment as is given to the students admitted in the academic year 2013-14 and onwards. The students who are admitted in the year 2011-12 now in the academic year 2013-14, would be in the third year of the course, the same students have been given scholarship benefit in the third year of the nursing course whereas they have been denied the benefit for the first and second years.

9 The learned senior counsel submits that insisting for the Suitability certificate even for the academic year 2011-12 is contrary to the procedure. As per the procedure, the institution is to start the nursing course with the Essentiality certificate issued by the State Government and thereafter, apply to the I.N.C. before passing the first batch for getting the Suitability certificate. The said procedure has been adopted by the Respondents from the academic year 2011-12 and the Suitability certificate has been issued from 2013-14. The learned senior counsel submits that the Social Welfare Department has disbursed the reimbursement of fees / scholarship of the years 2011-12 and 2012-13 without insisting the Indian Nursing Council the Suitability certificate to (1) Marhum Bashasav Bahuuddeshiya Seval Bhavi Sanstha, Javalge Nursing School New Bhagyanagar, Latur, (2) Shri. Swami Samarth Nursing School (RANM), Garkheda Parisar, Aurangabad, (3) Shradha Nursing School (RANM), HUDCO, Aurangabad, and (4) National Health and Law Research Institute's, Chinguaa Institute of Nursing Education, Kavathe Mahankal, Sangli.

10 The learned senior counsel submits that as per the

order of the Supreme Court dated 2nd May, 2014, it is clear and accepted position that the State Government has power to grant recognition and that the Indian Nursing Council has no authority to grant such recognition in so far as A.N.M. and G.N.M. courses are concerned. The review applications are devoid of any merit and thus, deserve to be dismissed with cost.

11 In view of the communication dated 23rd July, 2014, the students will be deprived the benefits of fee reimbursement for two academic years i.e. 2011-12 and 2012-13 whereas the students admitted in the academic year 2013-14 and 2014-15 would get the benefits. The students who are admitted in the academic year 2011-12, would get the benefits of third year of their course in the year 2013-14 where the same students have been denied the aforesaid benefits for the first and second years of their respective course. The State Government is denying the said benefits to the students belonging to the reserved categories for the aforesaid academic years 2011-12 and 2012-13 under the pretext of non-compliance of condition 8 of the Government Resolution dated 21st March, 2005. There is no reasonable basis in denying the said benefits to the students for the said two academic years. Writ

Petition Nos.3052, 3054 and 3055 of 2013 also filed seeking writ of mandamus for grant of scholarship to the backward students who have undergone the studies for the courses for the academic years 2011-12 and 2012-13 and further to release the scholarship etc. Those writ petitions were also taken together with PIL No.72 of 2013. This Court has scrutinized the stand taken by the State Government and opined that there is no legal basis for the stand taken by the State Government though condition 9 of the Government Resolution dated 21st March, 2005 struck down in said PIL No.72 of 2013. It is not the case of the review petitioners that due to non-compliance of condition 8 of the Government Resolution dated 21st March, 2005, the recognition granted to those institutions has been withdrawn. On the other hand, the students under the reserved categories of the aforesaid batch have been conferred with the degree after passing of the final examination from the same college / institution. Even otherwise, condition 8 of the said Government Resolution, could not have been survived in view of the judgment and order passed by the Supreme Court which is discussed in the later part of this order.

12 It is useful to refer the stand taken by Respondent

No.4 /INC in said PIL No.72 of 2013. The contents of the affidavit filed by the Joint Secretary of the added Respondent No.4/INC have been reproduced in paragraph No.30 of the judgment rendered in PIL No.72 of 2013. Respondent No.4 / INC has taken a stand by filing the affidavit that the INC is not aware as to in what circumstances the State Government inserted clauses 8 and 9 in the said Government Resolution dated 21st March, 2005. It has been made clear that the Indian Nursing Council has been vested with the power to recognize or approve any particular institution or college for awarding of qualifications recognized by the Council. The State Governments, the State Nursing Councils and the Indian Nursing Councils have totally different roles in the system. In PIL No.72 of 2013, the Maharashtra Nursing Council has also not supported the stand taken by the State Government.

13 In the backdrop of this, in paragraph No.4 of the order dated 13th August, 2015, which is now sought to be reviewed, we have observed that the State would not be entitled to withhold reimbursement of the fees for the years 2011-12 and 2012-13.

14 In the case **Union of India and another Vs. KMJ**

College of Nursing (Trust), Bangalore and others, reported in, **2005 AIR Kant R 1568**, the question arose for consideration as to whether the conclusion reached by the learned Single Judge that there was no obligation on the part of the first respondent to obtain permission or recognition from the Indian Nursing Council to establish a nursing institution and the insistence of the said condition by the University was without any basis, arbitrary and unjustified. The Division Bench of the Karnataka High Court after referring the various provisions, has observed that the learned Single Judge was fully justified in taking the view that it is not obligatory to obtain recognition or approval from the Nursing Council of India.

15 In the case of **K. Velayudhan Memorial Trust Vs. State of Kerala and others**, reported in, **(2010) 3 KLT 367 (FB)**, the three Judges Bench of the Kerala High Court in paragraph No.22 of the judgment made the following observations:

“22. We are of the opinion that having regard to the scheme of both the abovementioned enactments, the authority of the National Council is limited to the establishment of standards of education which includes prescribing the appropriate syllabus, norms

of training, prescription of appropriate infrastructure for conducting the courses etc. whereas whether a particular institution which proposes to impart education in Nursing etc. is to be recognised having regard to the norms and standards prescribed by the National Council and also having regard to the availability of the infrastructure etc. of a particular institution is a matter to be decided by the Council established under the Kerala Act X of 1953. If that is the legal position emerging from the examination of the two enactments referred to earlier, we are of the opinion that Clauses (2) and (6) of Regulation 78 in so far as they purport to obligate the institutions proposing to impart training in Nursing and allied courses to seek prior approval of the National Council are ultra vires the authority of the National Council. That being the case the various communications issued by the National Council, purporting to permit each of the appellants herein to commence various courses in Nursing with an intake of students specified as against each of those courses, in our opinion, are without any basis in law. The appropriate authority to consider such applications is the State Council established under Act X of 1953 of the State of Kerala though there is a statutory appeal against such authority provided under Section 27 of the Act X of 1953 of the State of Kerala. No doubt, the State Council while granting or declining permission/approval for commencement of

any training course in Nursing or allied courses covered under the abovementioned two enactments is bound by the norms and standards stipulated by the National Council.”

16 In the case of **Prameela Adhar A.N.M. Training School, West Kashipur and others Vs. The State of Bihar through the Chief Secretary, Government of Bihar and others,** decided by the Patna High Court (Coram : Honourable Mr. Justice Prakash Chandra Verma) in Civil Writ Jurisdiction Case No.19920 of 2012, the learned Single Judge has also taken a similar view and held that there is no legal necessity of obtaining prior permission of the Indian Nursing Council for establishment of training institution and quashed the letter dated 9th January, 2012 issued by the Indian Nursing Council.

17 In Letters Patent Appeal No.202 of 2013 and connected LPAs, the Division Bench of Patna High Court found that quashing of letter dated 9th January, 2012 by the learned Single Judge was without jurisdiction and the said finding is contrary to the law laid down in the case of **Raj A.N.M. School, Muzaffarpur Vs. The State of Bihar and others,** reported in, **1993(2) P.L.J.R. 479,** and

the extent of powers vested in the Council. The Division Bench has therefore, set aside the part of the order only to the extent that it quashes the letter dated 9th January, 2012.

18 The Supreme Court in Civil Appeal arising out of Special Leave Petition (C) No.9 of 2014 (*Nutan Kumari and another Vs. State of Bihar and others*), in paragraph Nos.3 and 4 has made the following observations:

“3. Once it is the accepted position that it is the State Government that has the power to grant recognition and that Indian Nursing Council has no authority to grant such recognition insofar as Auxiliary Nurse and Midwife Course (ANM Course) is concerned, the view taken by the Single Judge in quashing the letter dated 9.1.2012 was proper and there was no justification for the Division Bench to interfere with that part of the order. As a matter of fact, the above position is established by the judgment of Patna High Court in *Raj A.N.M. School, Muzaffarpur vs. The State of Bihar and others* 1993(2) P.L.J.R. 479.

4 Consequently, civil appeal is allowed. The part of the order of the Division Bench, as indicated above, is set-aside. The order dated 8.1.2013 passed by the Single Judge is restored as it is. No costs.”

19 Moreover the fees reimbursement is to the S.C. and O.B.C. students and not the institutions. The institution is allowed to admit the students without any demur, their results are also declared and are allowed to prosecute further studies. There would be no rational in withholding and/or denying the reimbursement of fees.

20 In view of the above discussion, the judgment and order passed in Public Interest Litigation No.72 of 2013 and connected writ petitions therein and in view of the order passed by the Supreme Court in the case of *Nutan Kumari and another Vs. State of Bihar and others* (supra) by accepting the view taken by the High Court of Patna in the case *Raj A.N.M. School, Muzaffarpur Vs. The State of Bihar and others* (supra), we do not find any substance in these review applications. Hence, the following order:

ORDER

All the review applications are hereby dismissed. In the circumstances, there shall be no order as to the costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]