

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11260 OF 2017

Private Nursing Schools and Colleges
Management Association,
Having its registered Office at
Soniya Chambers
3rd Floor, Seven Hills,
Jalna Road, Aurangabad.
Through its President,
Dr. Balasaheb s/o Shivajirao Pawar
age 50 years, occ. social worker
r/o Plot no. G-57 N-4
CIDCO, Aurangabad.

Petitioner

Versus

1. The Union of India
Through its Secretary
Ministry of Health and Family Welfare
348, A Wing, Government of India,
Nirman Bhavan,
New Delhi.
2. The State of Maharashtra
Through its Secretary
Medical Education & Drugs Department
Mantralaya, Mumbai 32.
3. The State of Maharashtra
Through its Secretary
Social Justice and Special Assistance Department
Mantralaya, Mumbai 32.
4. The State of Maharashtra
Through its Secretary
Tribal Development Department,
Mantralaya, Mumbai 32.
5. The Indian Nursing Council
8th floor, BNCC Center, Plot No. 2
Community Center, Okhala Phase 1

New Delhi
Through its Registrar cum Secretary

6. The Maharashtra Nursing Council
5th Floor, Bombay Mittal Annex
Gunbow Street, Opp. Residency
Hotel, D.N. road, Fort, Mumbai
Through its Registrar.
7. The Maharashtra University of Health
Sciences, Mhasrool Dindori Road,
Nashik, District Nashik
Through its Registrar

Respondents

Mr. P.M. Shah, Senior Counsel instructed by Mr. S.P. Shah,
advocate for petitioner.

Mr. V.S.R. Krishna alongwith Mr. Alok Sharma, advocates for
respondent no. 5.

Mr. Bhushan Kulkarni, Standing Counsel for respondent no. 1.

Mr. S.P. Sonpawale, A.G.P. for respondents 2 to 4.

Mr. C.A. Jadhav, advocate for respondent no. 6.

Mr. Anandsingh Bayas, advocate for respondent no. 7.

WITH
WRIT PETITION NO. 10639 OF 2017

Shiva Trust's
Supriyadidi Sule College of Nursing
At Wadala Mahdeo, Tq. Shrirampur
District Ahmednagar
Through its Administrative Officer
Dr. Shantanu s/o Rangnath Pawar
age 31 years, occ. service
r/o Plot No. 20, Indraparashtha Housing
Society, Garkheda Parisar
Aurangabad
District Aurangabad

Petitioner

Versus

1. The Indian Nursing Council
8th floor, BNCC Center, Plot No. 2

Community Center, Okhala Phase 1
New Delhi
Through its Registrar cum Secretary

2. The Maharashtra Nursing Council
5th Floor, Bombay Mittal Annex
Gunbow Street. Opp. Residency Hotel
D.N. Road, Fort, Mumbai
Through its Registrar.
3. The Maharashtra University of Health Science
Mhasrool Dindori road,
Nashik, District Nashik
Through its Registrar
4. The State of Maharashtra
Through the Secretary for Medical
Education and Drugs Department
Mantralaya, Mumbai
5. The Commissioner / competent authority
State CET Cell, 305,
Government Polytechnic Building
Kherwadi, Bandra (East)
Mumbai.

Respondents

Mr. V.D.Hon, Senior Counsel instructed by Mr. A.V. Hon, advocate for petitioner.

Mr.V.S.R. Krishna with Mr. Alok Sharma, advocates for respondent no. 1.

Mr. C.A. Jadhav, advocate for respondent no. 2.

Mr. Anandsingh Bayas, advocate for respondent no. 3.

Mr. S.P. Sonpawale, A.G.P. for respondent no. 4.

Mr. M.D. Narwadkar, advocate for respondent no. 5.

CORAM : R.M.BORDE &

SMT. VIBHA KANKANWADI, JJ.

RESERVED ON : 5th OCTOBER, 2017.

PRONOUNCED ON : 9th OCTOBER, 2017.

JUDGMENT : (PER R.M. BORDE, J.)

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the respective parties.

2. Parties are referred to as per their status in Writ Petition No. 11260/2017.

3. Petitioner is a public trust registered under the provisions of Societies Registration Act as well as Maharashtra Public Trust Act, 1950. The President of petitioner-trust has been authorised to present the petition by the trust.

4. Petitioner - registered management association consists of membership of about 400 schools and colleges those are active in imparting training to the nursing students and conducting private nursing schools and colleges. The private schools and colleges are situate in the entire State of Maharashtra. Petitioner-association is praying for issuance of declaration that the Indian Nursing Council - respondent no. 5 has no authority to grant recognition to the institutions imparting nursing courses such as Auxiliary Nurse and Midwife course (ANM), General Nursing and Midwifery (GNM), Bachelor of Nursing (B.Sc.), Post Basic Bachelor of Nursing (P.B.B.Sc.) and Master of Nursing (M.Sc.). Petitioner is also praying for issuance of writ of prohibition restraining respondent no. 5 from publishing on its website material indicating that the institutions imparting nursing course have to obtain recognition from respondent no. 5. Writ of mandamus is also requested to be

issued directing the Indian Nursing Council to remove forthwith all such material from its website including the material which indicates that the institutions imparting nursing course have to obtain recognition from respondent no. 5.

5. Writ Petition No.10639/2017 is presented by the educational institution imparting training to Basic B.Sc. Nursing and Post Basic B.Sc. Nursing students. Petitioner-educational institution also prays for grant of identical relief.

6. According to petitioners, respondents no. 6 and 7 are empowered to grant permission/affiliation to operate nursing schools/colleges in observance of the procedure prescribed under the Maharashtra Nursing Act, 1966 as well as Maharashtra Universities of Health Sciences Act, 1998. Petitioners contend that the institutions imparting nursing course have already commenced admission process for the academic year 2017-2018 and, the nursing courses are likely to commence from September, 2017 whereas the cut off date prescribed is 31st October, 2017. Grievance is made that in view of material, published by respondent no. 5 on their website, enlisting the institutions recognised by the Indian Nursing Council, the State Government has also stipulated condition in respect of securing permission /renewal of validity every year from the Indian Nursing Council for disbursement of scholarship to students as well as for referring the students for admission. It is the contention of petitioners that the Maharashtra Nursing Council has also accorded permission to enroll students for B.Sc. P.B.Sc and M.Sc. nursing courses for the academic year 2017-2018 in respective colleges operated by

members of petitioner-association. According to petitioners, the authority of the Indian Nursing Council is limited to evaluating the standard of education, which includes prescription of appropriate syllabus, norms of training and prescription of appropriate infrastructure for conducting courses etc. The Indian Nursing Council does not have authority to grant recognition or affiliation and the authority vests with the State Nursing Council under the State Act. Petitioners contend that respondent no. 5 - Indian Nursing Council is indulging in misuse of the powers in violation of the provisions of Indian Nursing Council Act, 1947. Petitioners contend that the stand of the Indian Nursing Council is contrary to the directives issued by the Honourable Supreme Court as well as various High Courts from time to time.

7. Affidavit-in-reply has been tendered on behalf of respondent no. 5 - Indian Nursing Council, wherein it has been contended that, in terms of the constitutional provisions, the State has no powers to legislate on the subject of education and as such, reliance placed by petitioners on the State Act in support of their contentions is mis-conceived. Respondent has referred to Entry no. 66 of List - I of the Seventh Schedule likewise entry nos. 25 and 26 of List - III of the Concurrent List relating to education, including technical education, medical education and universities subject to provisions of entries 63, 64, 65 and 66 of List - I and legal, medical and other professions. It is contended that the issue relating to the powers of the Central Statutory Authority like Indian Nursing Council stands settled by virtue of decision of the Punjab and Haryana High Court in case of Shiv Shakti Educational Society Vs. State of Punjab. Reference is made to

provisions of the enactment i.e. Indian Nursing Council Act to contend that, the contentions of petitioners that, Indian Nursing Council has no power to recognise the nursing institutions and has no authority to display on its website the list of recognised institutions, is misconceived and not maintainable. Respondent contends that the judgment of the Honourable Apex Court in the matter of Nutan Kumari & another Vs. State of Bihar and others is not binding precedence. It is contended that the order has been passed ex-parte. Reliance is placed on judgment of the Patna High Court in the matter of Raj ANM School Muzaffarnagar vs. The State of Bihar and others reported in **1993(2) PLJR 479**.

8. In the written argument tendered on behalf of respondent no. 5, following conclusions are requested to be drawn. :

- a) The Indian Nursing Council has power to recognize Qualifications and Authorities as per section 10 of the Act.
- b) The Indian Nursing Council has power to inspect institutions recognised by the State Authorities under section 13 so as to assess its suitability.
- c) The Indian Nursing Council has the power to issue letters regarding the suitability / permission / recognition of Nursing Institutions after due inspection under section 13 and 14 of the Act.
- d) The Indian Nursing Council has the power to withdraw the recognition granted by the State Authorities with the result that the Students passing out of such INC unrecognized nursing training institutions

cannot get themselves registered in any other State Council other than the State which has recognised the said Nursing Institution.

e) The Notice No. 1-6/Advt./2017 [At page 29-A of the petition] issued is in Public Interest and in the interest of student community at large and is legal and proper.

9. The Indian Nursing Council Act, 1947 has been enacted with a view to constitute Indian Nursing Council in order to establish uniform standard of training for nurses midwives and health visitors. The preamble of the act refers to the aforesaid object. Section 10 of the Central Act refers to recognition of qualifications whereas section 11 records effects of recognition. Section 12 deals with power to require information as to courses of study and training and examinations whereas section 13 relates to inspection of the institutions and, section 14 of the act which is also relevant relates to withdrawal of recognition. The aforesaid provisions, sections 10 to 14 are quoted as below :

10. Recognition of qualifications :

(1) For the purposes of this Act, the qualifications included in [Part I of] the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the [State] [***] which, being recognised by the [State] Government [in consultation with the State Council, if any] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, [auxiliary nursing

midwifery], health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority [in any [territory of India to which this Act does not extend] or foreign country] [***] which by the law of [such territory] or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any [such territory] or country, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act:

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice [of the foreign country] in which the qualification is granted persons domiciled or originating [in India] [***] and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession [in that country]

Provided further that -

(i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a [State] Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and

(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement, and recognised on the said date by the State Council of State to which this Act then extended, shall continue to be a recognised qualification for purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply mutatis mutandis to the declaration by the Council of a qualification granted in respect of post-certificate nursing training a a recognised higher qualification.

11. Effect of recognition :

[(1)] Notwithstanding anything contained in any other law -

(a) any recognised qualification shall be a sufficient qualification for enrollment in any [State] register

(b) no person shall, after the date of the commencement of this act, be entitled to be enrolled in any [State] register as a nurse, midwife, [auxiliary nurse-midwife] health visitor, or public health nurse unless he or she holds a recognised qualification :

Provided that any person already enrolled in any State register before the said date may continue to be so enrolled notwithstanding that he or she may not hold a recognised qualification :

Provided further that any person who was immediately before the said date entitled to be enrolled in any State register but was not so enrolled shall, on application made in this behalf before the expiry of two years from the

said date be entitled to be enrolled in that register ;

(c) any person holding a recognised higher qualification shall be entitled to have the qualification entered as a supplementary qualification in any State register in which he or she is enrolled, and after the said date no person shall be entitled to have entered as a supplementary qualification in any [State] register any qualification which is not a recognised higher qualification.

[(2) Notwithstanding anything contained in clause (b) of sub-section (1) -

(a) a citizen of India holding a qualification which entitles him or her to be registered with any Council of Nursing or Midwifery (by whatever name called) in any foreign country, may, with the approval of the Council, be enrolled in any State register; and where approval has been accorded by the Council in respect of such qualification in one case, the approval of the Council for enrollment in a State register in the case of any other citizen of India holding the same qualification shall not be necessary;

(b) a person not being a citizen of India who is employed as a nurse, midwife, auxiliary nurse-midwife, teacher or administrator in any hospital or institution situated in any State for purposes of teaching, research or charitable work may, with the approval of the President of the Council, be enrolled temporarily in the State register for such period as may be specified in this behalf in the order issued by the said President :

Provided that practice by such person shall be limited to the hospital or institution to which he or she is attached.]

12. Power to require information as to courses of study and training and examinations.

Every authority in any [State] [***] which grants a recognised qualification or a recognised higher qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualifications conferred, and generally as to the requisites for obtaining such qualification.

13. Inspections

(1) The Executive Committee may appoint such number of inspectors [whether from among members of the Council or otherwise] as it deems necessary to inspect any institution recognised as a training institution, and to attend examinations held for the purpose of granting any recognised qualification or recognised higher qualification.

(2) Inspectors appointed under this section shall report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein, or as the case may be, on the sufficiency of the examinations.

(3) The Executive Committee shall forward a copy of such report to the authority or institution concerned, and shall also forward copies, with the remarks, if any, of the authority or institution concerned thereon, to the Central Government and to the [State]

Government and [State] Council of the [State] in which the authority or institution is situated.

14. Withdrawal of recognition

(1) When, upon report by the Executive Committee, it appears to the Council -

(a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any [State] [***] or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution recognised by a [State] Council for the training of nurses, midwives, [auxiliary nurse-midwives] or health visitors does not satisfy the requirements of the Council, the Council may send to the Government of the [State] in which the authority or institution, as the case may be, is situated a statement to such effect, and the [State] Government shall forward it, along with such remarks as it may think fit to the authority or institution concerned and, in a case referred to in clause (b) to the [State] Council also, with an intimation of the period within which the authority or institution may submit its explanation to the [State] Government.

(2) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of the period, the [State] Government shall make its recommendations to the Council.

(3) The Council, after such further inquiry, if any, as it may think fit to make, and in a case referred to in clause (b) of sub-section (1), after considering any remarks which the [State] Council may have addressed to it, may declare -

(a) in a case referred to in clause (a) of that sub-section, that the qualifications granted by the authority concerned shall be recognised qualifications only when granted before a specified date, or

(b) in a case referred to in the said clause (b), that with effect from a date specified in the declaration any person holding a recognised qualification whose period of training and study preparatory to the grant to him of the qualification was passed at the institution concerned shall be entitled to be registered only in the [State] in which the institution is situate.

(4) The Council may declare that any recognised qualification granted outside the [States] [***] shall be a recognised qualification only if granted before a specified date.

10. Recognition as has been contended, relates to the qualifications which are included in Part - I and Part - III of the Schedule. Sub-section (2) of Section 10 prescribes tendering of an application by an authority within the State which being recognised by the State, in consultation with the State Council, for the purpose of recognising the qualification and, the Council may declare such qualification, or such qualification only when granted after a specified date, to be recognised qualification. The effects of recognition have been prescribed in section 11 of the Act. There shall be no dispute that the Central

Council has an authority to require submissions of information as to courses of study and training and examination as well as shall have authority to inspect the institution. So far as the effect of withdrawal of recognition is concerned, it is stipulated under section 14 that in the circumstances enumerated in the said section, the Council may declare that any recognised qualification granted outside the State shall be a recognised qualification only if granted before a specified date. Sub-section (3)(b) of Section 14 also refers to the entitlement to be registered only in the State in which the institution is situated. There is also no dispute raised by Indian Nursing Council that the effect of withdrawal of recognition of a particular institution is that the qualification conferred by such institution would not be recognised outside the State however, those shall be valid within the State if the institution has been accorded recognition by the State Council and the State Government or the concerned university in case of graduation level course.

11. The object of enactment namely Maharashtra Nursing Act, 1966, as has been declared in the preamble of the Act is to unify and make better provision for regulating registration and training of nurses in the State of Maharashtra and to provide for matters connected with the purposes aforesaid. Section 2(a) of the Act defines "Affiliated Institution" as an institution for the nursing of the sick, maternity or child welfare, which is or which is deemed to be affiliated to the Council in accordance with this Act and the by-laws. "Recognised Institution" is defined in section 2(o) of the Act to mean that any institution recognised or deemed to be recognised for training of nurses in accordance with this Act and

the by-laws. Chapter IV of the Act deals with recognition of training institutions and affiliation of institutions. Section 25 of the act deals with recognition of training institutions whereas section 26 relates to affiliation of institutions. The provisions are as quoted below :

25. (1) The Council shall by its by-laws prescribe examinations to be held by it, the qualifications for admission to such examinations, the courses of studies for such examinations, the standard of passing, the certificates or any other like awards to be given to persons who pass the examinations, and such other matters in respect of such examinations as may be necessary or expedient.

(2) The Council may, in accordance with the by-laws made by it in this behalf and after inspection by its representative and holding such inquiry as it deems fit, recognise any institution for training nurses for the examinations of the Council.

(3) The Council may withdraw recognition from any such institution after its inspection by a representative of the Council. The order of such withdrawal shall be in writing and shall be served in the prescribed manner.

(4) Any person aggrieved by any order of the Council under this section may, within three months from the date on which such order is communicated to him appeal against such order to the State Government. The order of the State Government or any such appeal shall be final.

(5) No school, hospital or other institution which is not recognised under this section shall issue to any person a certificate or enter

the name of any person in any document purporting to show that such person is qualified by reason of his having passed any examination or undergone any course of training to practise as a nurse, unless his name is registered or entered in the List under this Act.

(6) Any person who contravenes the provisions of sub-section(5) shall, on conviction, be punished with fine which may extend to three hundred rupees.

26. The Council may, in accordance with the by-laws made by it in this behalf and after inspection by its representative and holding such inquiry as it deems fit, affiliate to it any institution for the nursing of the sick, maternity or child welfare.

12. There is a specific provision relating to grant of recognition to the training institutions provided in the Act of 1966 whereas such provision is absent in the Central enactment. The Council is, thus, invested with power to recognise training institutions and grant affiliation to the nursing institutions imparting training. So far as degree courses in nursing are concerned, the process of affiliation and permission is governed by Chapter IX of the Maharashtra University of Health Sciences Act, 1998. It is the contention of petitioners that the institutions imparting training and conferring diploma and degree such as GNM, ANM and graduation degree have been recognised under the provisions of Maharashtra Nurses Act, 1966 whereas nursing colleges have been granted affiliation under the Maharashtra University of Health Sciences Act, 1988 and, all the institutions have been issued letter of intent/permission by the State Government. It would be illegal to

prohibit the institutions, having secured recognition under the Maharashtra Nurses Act as well as the Universities Act, to admit students only on the ground that no recognition has been granted by the Indian Nursing Council. The provisions of the Central Act of 1947 do not contain an enabling provision requiring the Indian Nursing Council to grant recognition. Reliance placed on section 10 of the Act is misplaced for the reason that the recognition spoken under section 10 relates to qualification and not for imparting education and training by the institutions. The effect of recognition has been specified in section 11 of the Act. It is tried to be contended that since section 14 deals with withdrawal of recognition, it shall be presumed that there is an authority to grant recognition. Withdrawal of recognition of the qualification as provided under section 14 of the Act will have an effect of prohibiting the candidates, having acquired qualification from the institution recognised by the State, to limit their practice within the State and, this position has not been controverted by the Indian Nursing Council.

13. Our attention is invited to the order of the Honourable Supreme Court in the matter of Nutan Kumari (supra) arising out of Special Leave to Appeal (Civil) No. 9/2014 decided on 2nd May, 2014. The order is as quoted below :

Leave granted.

2. Despite service of notice, respondent No. 7- Indian Nursing Council has not filed any counter-affidavit in opposition to the special leave petition.

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, Muzffarpur 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.

It is contended on behalf of respondent - Indian Nursing Council that the order in Nutan Kumari's case (surpa) does not lay down any binding precedence since the order has been passed ex-parte and no counter affidavit was presented on behalf of the Indian Nursing Council. It is to be noted that the review petition presented by respondent bearing No. 3019/2015 has been dismissed on the ground of delay as also on merit on 7th January, 2016.

14. In the matter of Union of India Vs. K.M.J. College of Nursing (Trust) Bangalore and others, the decision of the learned Single Judge of Karnataka High Court, quashing the communication issued by the University informing the Nursing college that since the inspection committee of the Indian Nursing Council on inspection, had found that it was not feasible for the college to

start B.Sc. Nursing programme, the college has to obtain the permission from the Indian Nursing Council within a month and submit the same to the University with a view to enabling it to make admission for nursing course, was challenged. The learned Single Judge quashed the communication reserving liberty to the University with a view to enable it to make admission for nursing course for the academic year 2002-2003. The learned Single Judge proceeded to quash the communication reserving liberty to the University to act in accordance with law on the basis of report submitted by Indian Nursing Council. The learned Single Judge held that there was no obligation on the part of the College to seek permission or recognition from Indian Nursing Council to establish Nursing Institution and, the insistence of the University, to seek permission from the Indian Nursing Council, is without any basis and arbitrary. The Division Bench, while considering the appeal, has confirmed decision of the learned Single Judge and concluded on survey of provisions of the Central Act, thus:

"9 Therefore, we are of the view 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 and quashing the communication Annexure-E. Therefore, when the law does not require the Institutions to seek recognition or approval from the Nursing Council of India, even if the respondent-College has made an application seeking recognition from

Nursing Council of India, it will not affect its right to continue to exist as a Nurses' Training Institution so long as the recognition granted by the State Council under the Provisions of the Nurses Act and also by the Rajiv Gandhi University Act, is not withdrawn."

In terms of the aforesaid judgment, the Government of Karnataka issued circular quoting the aforesaid view of the Division Bench and directed to consider recognition and approval to the schools and colleges for imparting education / training for nurses and fixation of intake of the course as per the State Government orders. The decision of the Division Bench of Karnataka High Court has not been disturbed nor there is any change to the policy adopted by the State of Karnataka.

15. In another matter before the Honourable Supreme Court, presented by the Karnataka State Association of The Management of Nursing and Allied Health Science Institutions and others Vs. Indian Nursing Council & others, Civil Appeal Nos. 12759-12761 of 2017, decided on 11.09.2017, identical issue was raised. The Learned Single Judge of the Karnataka High Court declared that the Indian Nursing Council has no authority to grant recognition to the institutions imparting nursing course and further restrained from publishing on website material indicating that the institutions imparting nursing course have to obtain recognition from respondent no. 2 therein i.e. Indian Nursing Council and, all such material from which it could infer that recognition is to be obtained

from the Indian Nursing Council be withdrawn from its website forthwith. The Division Bench, while considering the appeal has maintained the first part of the order whereas the second part of the order was directed to be stayed. While dealing with the appeal arising out of order of the Division Bench, the Honourble Supreme Court has passed following order :

1. Leave granted.
2. The learned Single Judge allowed the writ appeal in the following terms :

"16. In the circumstances, I am of the clear view that the petitions (W.P. Nos. 25355-57/2017) are entitled to succeed. In the result, these petitions (W.P. Nos. 25355-57/2017) are allowed. It is declared that the Indian Nursing Council, Respondent No. 2 herein, has no authority to grant recognition to the Institutions imparting Nursing courses. The Respondent No. 2 is further restrained from publishing on its website, materials indicating that the institutions imparting Nursing courses have to obtain recognition from Respondent no. 2 and all such materials from which it could infer recognition is to be obtained from Indian Nursing Council stand withdrawn from its website forthwith. W.P. Nos. 28383-28385/2017 which is also for the similar relief is accordingly disposed of. Rule issued and made absolute accordingly.

3. Against the aforesaid Single Judge's judgment a writ appeal was preferred to the

Division Bench of the Karnataka High Court which admitted the appeal and stayed the second part of the learned Single Judge's order.

4. We are of the view that the two parts of the learned Single Judge's order are inextricably inter connected. Once it is declared that the Indian Nursing Council, Respondent no. 2 has no authority to grant recognition to the Institutions imparting Nursing course, it must follow that the Respondent no. 2 is, therefore, restrained from publishing on its website, the material that are indicated. We are, therefore, of the view that the interim order passed by the Division Bench must be set aside and the order of the learned Single Judge restored.

5. The appeals are allowed in the aforesaid terms.

16. Reliance is placed on a decision rendered by the Full Bench of Kerala High Court authored by the then Chief Justice in the matter of K. Velayudhan Memorial Trust Vs. State of Kerala reported in **2010 SCC Online Ker 1236**. The appellants before the High Court were the educational institutions imparting training in nursing. The Indian Nursing Council accorded permission to the institutions holding them suitable for conducting various courses and prescribed the intake. The State Nursing Council known as Kerala Nursing and Midwives Council, by issuing various communications, accorded approval for commencement of various courses with specified intake as against each course. However, the intake approved by the State Council was less than the intake approved by the National Council. Aggrieved by the decision of the State Council, the appeal was carried to the State Government.

The State Government prescribed intake of the students for Post Graduation courses. Aggrieved by the decision of the State Council and decision of the State in one of the appeals, the institutions approached High Court contending that the decision of the National Council shall prevail. The learned Single Judge of the High Court took a view that the orders passed by the Indian Nursing Council shall prevail and the State Nursing Council shall take steps in accordance with the regulations of the Indian Nursing Council and obtain appropriate order from the Indian Nursing Council. It was also held that the the decision of the university cannot sustain and supersede the decision of the Indian Nursing Council. Analysing further, the Full Bench observed in paragraphs no. 17 to 23 of the judgment as below :

17. In the purported exercise of the powers under Sub-section (1) of Section 16 of the Indian Nursing Council Act, 1947, the National Council made certain regulations calling the Indian Nursing Council Regulations, 2007 which were published in the Gazette of India dated 20.04.2007. Section 78 (Part XIII) of the said regulations purports to deal with the procedure for establishing a School or College of Nursing Education and Training. The relevant Clauses for the purpose of the present case are Clauses (2) and (6) of Regulation 78 which read as follows :

"78. Procedure for establishing a School or College of Nursing Education and Training :

xxx xxx

2. The Indian Nursing Council on receipt of the proposal from the Institution to start a School/College of Nursing, will undertake the first inspection of the proposed Institute to assess its suitability with regard to physical

infrastructure, clinical facility and teaching faculty.

xxx xxx

6. The decision of INC as regards the suitability of the Institution and the number of seats for each programme shall be final. the SNRC and Examination Boards shall approach INC first before making any departure from the approval granted by INC."

18. In substance the above two Clauses purport to authorise the National Council to decide upon the suitability of an institution to start School or College of Nursing and also the number of seats that can be filled up by such institutions. clause (2) authorises the National Council to receive proposals from institutions for the establishment of Schools or Colleges of Nursing. It is in the purported obedience of the powers under the abovementioned Regulation 78(2) read with Regulation 78(6), each of the appellants herein sought the permission of the National Council and it is in the purported exercise of the powers referred to above, the National Council issued the proceedings to each of these appellants permitting them to commence various courses in Nursing with a specified intake of students.

19. The core question to our mind is whether the above extracted sub-regulations (2) and (6) of Regulation 78 are within the competence of the National Council. In other words, whether the said regulations are intra vires the authority of the National Council having regard to the scheme and tenor of the Indian Nursing Council Act, 1947.

20. In our view, the question was earlier considered by a learned Judge of this Court in National Medical Educational Charitable Trust v. Kerala Nursing and Midwifery Council [2006

(2) KLT 612]. At paragraph 10 of the said judgment the learned Judge categorically held that the 1947 Act does not empower the National Council to deal with the aspects of recognition or approval to institutions imparting education and Nursing. Paragraph 10 reads as follows :

"10. Going by the above mentioned provisions of the Act, I feel that the Act does not empower the Central Council to deal with recognition or approval of institutions, imparting education in Nursing. The function of the Central Council, is mainly concerned with the recognition of qualifications, for the purpose of enrollment in the State Register. It also enables the Central Council, to de-recognise any recognised qualification awarded by any authority in view of the provisions contained in clause (a) of sub-s(1) of S. 14 read with clause (a) of sub-section (3) thereof. In the case of institutions, like the institution of the petitioner, the power of the Central Council in the light of clause (b) of sub-s(1) of S 14 read with clause (b) of sub-s(3) thereof, is limited to de-recognising the qualification obtained from such institutions in other States. Even after the disapproval of the Central Council, the said qualification remains valid for the parent State. Recognition of de-recognition of institution, like that of petitioner, imparting training in nursing, does not come under the purview of the Indian Nursing Council Act, 1947. But, the power to recognise the qualifications, may confer incidental or ancillary power to prescribe the minimum facilities to be provided for, in the Nursing institutions. So, by virtue of the regulation making power contained in S. 16(1) of the above said Act, the Central Council may prescribe the physical and clinical facilities that may be provided in an institution. The same is only for the purpose of deciding whether the training imparted in that institution, is upto the mark to enjoy the

recognition for the qualification awarded pursuant to the training. Recognition or approval of institutions is essentially the function of the State Nursing Council. S14(1) (b) of the Act also recognises the said position."

21. The learned Judge took into consideration the functions of the Council formed under the Kerala Act, 1953 and came to the conclusion that both the enactments deal with different facets of the matter. On an examination of the scheme of both the enactments we do not see any reason to take a view different than the one taken in the abovementioned judgment.

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 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 of 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.

23. In the circumstances, we are of the opinion that the judgment under appeal is required to be modified directing the State Council to consider afresh the case of each one of these appellants for conducting the various courses which are the subject matter of dispute in these appeals in the light of the judgment and in accordance with the norms and standards prescribed by the National Council apart from any of the prescriptions made by the Kerala State or the State Council and take expeditious decision with reference to each of the appellants preferably within a period of two weeks from the date of receipt of a copy of this judgment.

17. Relying upon Regulation 78 of the Nursing Council Regulation, 2007, published on 28th April, 2007, it was tried to be contended before the Full Bench that it is within the competence of the Indian Nursing Council to grant recognition to the institutions imparting nursing training. Referring to the provisions of the Act, the Full Bench, relying upon the judgment in the matter of National Medical Educational Charitable Trust Vs.Kerala Nursing

and Midwifery Council reported in **2006(2) KLT 612**, observed that the function of Central Council is mainly concerned with recognition of qualification for the purpose of enrollment in the State Register. It also enables the Central Council to de-recognise any recognised qualification awarded by the authority in view of provisions contained in Clause A of Sub-section(1) of section 14 r/w Clause A of Sub-section (3) thereof. Recognition and de-recognition of the institutions imparting training in nursing does not come under the purview of Indian Nursing Council Act, 1947. However, the power to recognise qualifications may confer incidental or ancilliary powers to prescribe the minimum facilities to be provided for, in the Nursing institutions. Taking recourse of the provisions of the Act, it is impermissible to prescribe recognition by Indian Nursing Council as mandatory. The appropriate authority to consider the application for recognition is the State Council which has been conferred with the powers under the Statute. Reliance placed by the Indian Nursing Council on the regulations framed in exercise of powers of the Indian Nursing Council Act is misplaced. Apart from this, there is some inconsistency between the regulations those have been pointed out during the course of hearing and the regulations referred to in the judgment of the Full Bench, which have not been explained by the Indian Nursing Council. It is tried to be contended that in view of entry 66 in List - I of the 7th Schedule r/w entries 25 and 26 in the Concurrent List i.e. List - III in the 7th Schedule, it is the Indian Nursing Council which has primacy in the matter of education and the Legislation by the State Government cannot be constitutionally recognised.

18. The arguments advanced by the Indian Nursing Council have been dealt with by the Full Bench in paragraphs 13 and 14 of the judgment. It is observed that the legislative field of education subsequent to introduction of 42nd amendment is to be found in entry 25 of the List - III of 7th Schedule of the Constitution. Whatever be the legal position prior to 42nd amendment vis-a-vis the various laws made by various States and the Parliament after the 42nd amendment, the laws regulating the field of education are preferable only to legislative authority conferred upon the abovementioned List - III of the 7th Schedule. It is further observed that the Indian Nursing Council Act, 1947, a pre-constitutional law is made for establishment of uniform standard of training for nurses, midwives, health visitors etc. Section 3 of the Act contemplates establishment of Council and, composition of which is specified in the said section. Taking recourse of the provisions of the Act, it has been observed that the authority of the National Council to decide upon the suitability of an institution to start the school or college of nursing and also the number of seats that can be filled up by such institution provided under the regulations framed under the Indian Nursing Council Act would be ultra vires the authority of the Council having regard to the scheme and tenor of the Indian Nursing Council Act, 1947. The question posed in that regard has been answered in the affirmative. The field occupied by the State Legislature includes the provision relating to grant of recognition to the institutions imparting nursing training whereas such power is not specifically conferred under Indian Nursing Council Act. There is no repugnance in the Central Law and the State Law. The conclusion arrived at by the Full Bench of the Kerala High Court as well as

Division Bench of the Karnataka High Court, on consideration of the provisions of the Indian Nursing Council Act and the respective State Legislations, which are of identical nature as Maharashtra Nursing Council Act, deserves to be accepted and, it is to be concluded that that the power and authority in respect of grant of recognition does not vest with the Central Council however, under the State enactment, it is the function of the State Council.

19. Learned counsel for respondent has placed reliance on the judgment in the matter of Shiv Shakti Educational Society (Regd.) Vs. State of Punjab and others decided on 19.12.2007 by the Division Bench of Punjab and Haryana High Court. The issues framed for consideration by the Division Bench were a) Whether approval of the INC was required for making admissions ? b) Whether the University could decline affiliation after approval has been granted by the INC ? c) 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 ? d) 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 ? e) Whether added respondent Nos. 5 to 8 could have been allowed to make admissions ? In the matter before the Punjab and Haryana High Court, the petitioner therein had started imparting nursing education for diploma course and had applied for 'no objection' certificate for establishing/opening a medical education institution for B.Sc. Nursing course. The Indian Nursing Council accorded approval and permitted intake of 40 students. The University, however, refused to grant affiliation. The State

Council had taken a stand that approval of Indian Nursing Council was not necessary for establishing the institution but was necessary only for registering the students for practice outside the State. While dealing with the issue, the Division Bench, considering the rules framed by the Indian Nursing Council, concluded that the Indian Nursing Council will have final authority and the State Council or the University shall have to accept finality of the decision by the Central Council. It was concluded that since the Central Council has laid down the procedure for making admissions as per regulations framed under Section 16, said procedure was binding for admission to B.Sc. Nursing. In other words, it was concluded that the Institution was required to obtain 'No Objection'/Essentiality Certificate from the State Government, get the inspection done from the Indian Nursing Council for permission to start the program, get approval from State Nursing Council and Examination Board/University before making admissions. The Division Bench, while considering the issue, has relied upon decisions in the matter of State of T.N. Vs. Adhiyaman Educational & Research Institute, **(1995) 4 SCC 104**, Thirumuruga Krupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust Vs. State of T.N., **(1996) 3 SCC 15**, State of Maharashtra Vs. Saint Dnyaneshwar Shikshan Shastra Mahavidyalaya & others, **(2006) 9 SCC 1**, State of Tamil Nadu Vs. S.V. Bratheep **(2004) 4 SCC 513**, etc..

20. The distinguishable feature between the enactments governing technical education and medical education and nursing education is that there is a specific power conferred under the relevant legislations regulating grant of registration, recognition by

concerned Central Council i.e. AICTE, NCTE or Medical Council of India. However, in the instant matter, the Central legislation i.e. the Indian Nursing Council does not confer such power. In the matter of Adhiyaman (supra), the issue was in respect of primacy of Indian Council of Technical Education (AICTE) to grant or withdraw permission to start Technical Institutions. AICTE Act conferred powers on the Technical Council to exercise such functions. In the matter of Thirumuruga, the issue was in respect of repugnance in Tamil Nadu Medical University Act and the Indian Medical Council Act and it was held that in view of Central Statute, no scope was left for operation of the State legislation and the State legislation was void. Section 10A of the Indian Medical Council Act, 1956, provides for grant of permission for establishment of new Medical College, new Course of Studies, etc. Since there is specific power conferred under the Central Legislation, it was held that the State Legislation was void. The matters before the Supreme Court, namely, Jaya Gokul and Adhiyaman were referable to the provisions of AICTE Act and those provisions, as stated above, conferred specific powers on the Technical Council, which is not a case in the instant matter so far as Indian Medical Council Act is concerned. In the matter of Sant Dnyaneshwar (supra), the issue was in the context of a NCTE Act, 1993. The High Court had held that the State Government had no role to play. After recognition is granted and the grant of affiliation had to follow which view has been confirmed by the Supreme Court. So far as NCTE Act is concerned, there is specific provision under Chapter IV of the Act. Section 14 of the NCTE Act relates to recognition of Institution, offering course of training in teaching education, whereas, Section 15 provides for permission for new

course or training by recognized Institutions.

21. Provisions of various Enactments, which have been considered by the Division Bench and the judgment of the Supreme Court interpreting such provisions are not comparable to the provisions of the Indian Nursing Council Act. The Division Bench has compared provisions of different enactments, which provide for different mechanism for grant of recognition and affiliation. The judgment, on which reliance is placed by the Division Bench of Punjab & Haryana High Court, in our view, is not acceptable and misplaced. The decisions of the Full Bench of Kerala High Court and Division Bench of the Karnataka High Court touch the issue and correctly interpret the provisions of Indian Nursing Council Act and respective State Legislations and as such, aforesaid decision, on which reliance is placed by the respondents, is not acceptable.

22. It must also be reemphasized that the Hon'ble Supreme Court, in the matter of Nutan Kumari (supra), has accepted the position spelt out in the judgment delivered by the Patna High Court that it is the State Government that has power to grant recognition and the Indian Nursing Council has no authority to grant such recognition so far as Auxiliary Nurse and Midwife Course is concerned and the view taken by the learned Single Judge is proper. Similarly, while confirming the judgment of the Karnataka High Court the Hon'ble Supreme Court has accepted the view of Karnataka High Court that Indian Nursing Council has no authority to grant recognition to the Institutions imparting Nursing education and as such, restrained Indian Nursing Council

from publishing on its website the materials, that are indicated.

23. So far as provisions of Maharashtra Nursing Act, 1966, are concerned, Chapter IV deals with recognition of Training Institutions and Affiliation of Institutions. Section 25 of the said Act, authorizes the Council to recognise Institutions for training of Nurses, whereas Section 26 provides for grant of affiliation of Institutions. So far as the Institution conducting graduation and post-graduation courses in Nursing are concerned, it is for the Maharashtra University of Health Sciences Act of 1998 to accord affiliation.

24. On analysis of provisions of Central enactments as well as State enactments and various judgments, it shall have to be concluded that once the State Council grants recognition and/or affiliation and so far as Graduation and Post-Graduation courses are concerned, if Maharashtra University of Health Sciences grants affiliation and the State Council accords permission and issues letter of intent or permission, the Institution can offer training in Diploma or Degree Courses in Nursing and it is not mandatory for such Institutions to secure recognition/permission from Indian Nursing Council. The functions of Indian Nursing Council are restricted to the aspects governed by provisions of Central enactment. Effect of refusal to accord approval in respect of Courses operated in the State or by Institutions, is that Diploma or Degree offered by such Institutions or University shall have validity only in the concerned State and the candidate securing such Diploma or Degree Certificate shall not be entitled to practice in any other State. This position has been reiterated in the judgment

of Full Bench of Karnataka High Court as well as Division Bench of Kerala High Court, which have been accepted by Indian Nursing Council in its reply.

25. For the reasons recorded above, writ petitions presented by petitioners deserve to be allowed. It is held and declared that the Indian Nursing Council - respondent no. 5 herein has no authority to grant recognition to the institutions imparting nursing training such as Auxiliary Nurse and Midwife Course (ANM), General Nursing and Midwifery (GNM), Bachelor of Nursing (B.Sc.), Post Basic Bachelor of Nursing (P.B.B.Sc.) and Master of Nursing (M.Sc.).

Respondent no. 5 - Indian Nursing Council is prohibited from publishing on its website material indicating that the institutions imparting nursing course in the Maharashtra State shall have to obtain recognition from it.

At the same time, it is imperative for such institutions, imparting training in nursing in Maharashtra State, (which have not been approved by the Indian Nursing Council), the State Council and Health University to publish on its website that the degrees and diploma awarded by such institutions shall have applicability only in the State and the candidates receiving such degree or diploma would be entitled to practice within the State only. The same shall also be mentioned in the diploma and degree certificates awarded by the institutions and the Universities in this regard and, the students shall be made known regarding this restriction by giving due publicity on the website while processing

admissions to such institutions.

Rule is accordingly made absolute. No costs.

SMT. VIBHA KANKANWADI
JUDGE

R.M.BORDE
JUDGE

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