

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2017

CORAM:

THE HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO

AND

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Appeal No.3 of 2017

& C.M.P.No.86 of 2017

1. Pondicherry University

rep.by its Registrar

College Development Council

Administrative Building

R.V.Nagar, Kalapet

Puducherry 605 014

2. Dean (i/c)

Pondicherry University

College Development Council

Administrative Building

R.V.Nagar, Kalapet

Puducherry 605 014

.. Appellants/Respondents

Vs.

Sabari College of Nursing

Managed by G.Arulambigai Educational Trust

rep.by Managing Trustee

G.Arulambigai

No.16, ECR Cuddalore Main Road

Kirumambakkam

Puducherry 607 402

.. respondent/Petitioner

Prayer: WRIT APPEAL filed under Clause 15 of Letters Patent against the order dated 2.1.2017 passed in WMP No.48 of 2017 in W.P.No.50 of 2017.

WMP.No.4/17 in WP.No.50/17: Petition to direct the 1st respondent university to grant provisional affiliation to the petitioner institution for the current academic year 2016-2017 so as to enable the students from petitioner institution to sit for 1st semester B.SC; Nursing Degree Course examination which is to be commenced on 04.01.17.

WP.No.50/17: Petition presented under Art 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records comprised in proceeding No.PU/AW-2/4/SCN/2016-2017/133 dt. 03.11.2016 which is followed by generic order of the same nature in PU/AW/2016-17 dt. 21.12.2016 on the file of the 2nd respondent and quash the same and consequently direct the respondents to grant continuation of affiliation in respect of the petitioner institution under the change of management as approved by the Puducherry Government order dt. 03.10.2016 for the academic year 2016-2017.

For Appellants : Mr.Vijay Narayanan,
Senior Counsel for
Mr.Stalin Abhimanyu

For Respondent : Mr.P.H.Aravind Pandian
Senior Counsel for
Mr.V.B.Perumal Raj

JUDGMENT

(Judgment of the Court was delivered by
NOOTY. RAMAMOohana RAO, J)

This writ appeal is preferred by Pondicherry University, the respondent in the writ petition, aggrieved by the interlocutory order passed by the learned single Judge pending the writ petition.

2. Heard Mr.Vijay Narayanan, learned Senior Counsel appearing on behalf of the learned Standing Counsel Mr.Stalin Abhimanyu and Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for the writ petitioner, respondent herein.

3. The controversy in the writ petition lies in a very narrow compass, centering around the right of the change of management of College of Nursing, which is already approved and affiliated to the appellant University. Contrary to the directions of the appellant University, CENTAC has allotted students for admission by the writ petitioner/College of Nursing for the academic session 2016-17 and the balance students under the management quota were also allowed to be filled in. When it came to the question of allowing such students to appear for the 1st Semester end examinations, which are slated to commence

on 4.1.2017, the trouble broke out, as the University kept insisting that such students cannot be permitted to take examination as their very admission has not been approved by the University and on the other hand it has objected for allowing such admissions to be undertaken by the authority concerned-CENTAC.

4. In our opinion, resolution of such a question requires further and serious consideration at the hands of the learned single Judge, who is yet to hear finally the writ petition. But, however, going by the factor of balance of convenience lying in the matter, we are in agreement, in principle, that the balance of convenience lies in favour of the students being allowed to appear for the 1st Semester end examinations, which are to be commenced on 4.1.2017. However, we modify the order dated 2.1.2017 passed by the learned Single Judge to the following effect:

1. The students pursuing B.Sc. Nursing Course with the respondent/writ petitioner College of Nursing for the academic year 2016-2017, shall be permitted to appear for the 1st Semester Examinations to be commenced on 4.1.2017.
2. Their answer sheets should be confined in a sealed cover without being evaluated.
3. The writ petitioner College of Nursing shall not move any application in the pending writ petition seeking directions to open the sealed cover and or for evaluation of such answer sheets till the writ petition is decided finally. The Registry shall not also entertain any such application.
4. The results of the students in the 1st Semester examination relating to the writ petitioner College, will come out only upon the writ petition being allowed in terms of the prayer.
5. The writ petitioner College of Nursing shall once again apply for extension of affiliation on or before 7.1.2017 to the appellant University and the appellant University shall consider the same independently for the academic year 2017-2018 without any regard for filing/pendency of the writ petition.
6. The respondent/writ petitioner/College of Nursing shall deposit a sum of Rs.6,00,000/- (Rupees Six Lakhs only) with the Registrar Judicial of this Court within a period of 15 days from today. Upon such deposit being made, the said amount shall be confined to an interest bearing Fixed Deposit with the Indian Bank, High Court Branch initially taken for a period of 91 days and to be extended by similar terms till the writ petition is decided so that it can bear interest.
7. If the writ petitioner succeeds in the writ petition, the amount so deposited together with interest carried

shall be refunded by the Registrar Judicial to the writ petitioner.

8. In case the writ petitioner fails, the entire amount shall be transmitted to the appellant University, namely Pondicherry University and the Registrar of the said University shall pay a sum of not less than Rs.5,00,000/- (Rupees Five Lakhs), equally/proportionately to all the 50 students, who are pursuing B.Sc., Nursing Course in the writ petitioner College for the academic year 2016-17, as a measure of token compensation for the loss/hardship sustained by them. It is needless to observe that the students are at liberty to sue the management of the College seeking damages separately and independently of the above payment. The University can appropriate the balance money, as fine imposed on the writ petitioner, for violating the directions it issued,
9. We request the learned Single Judge to spare urgent consideration for hearing the writ petition on out of turn basis, in view of the urgency involved, by 13th February, 2017, by which time, we expect the parties to complete the pleadings in all respects.
10. Finally, we place on record the singular reason that weighed with us for passing the above order. B.Sc., Nursing Course though attracts equally gifted and talented students who have passed out from 10+2 stream of education, but however, for variety of reasons including lack of adequate financial support and sufficient social back up, they may not have pursued other course, but preferred to pursue B.Sc., Nursing Course. Keeping the above factor in mind, we pass the above order though Sri Vijay Narayanan has reminded us that the Hon'ble Supreme Court has been consistently frowning upon the Courts passing interlocutory orders permitting the students to take examinations as a first step, which leads to otherwise avoidable complications at a later point of time.

5. The writ appeal stands disposed of in the above terms with the consent of both parties. No costs. Consequently, connected Miscellaneous Petition is closed.

6. The learned Standing Counsel for the appellant is requested by us to communicate the gist of this order to the Registrar of University, which would enable all the students pursuing B.Sc., Nursing Course for the academic year 2016-2017 admitted in the writ petitioner College, to appear for the 1st semester examination on 4.1.2017 for want of adequate time to make available a copy of this order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Registrar
Pondicherry University
College Development Council
Administrative Building
R.V.Nagar, Kalapet
Puducherry 605 014
2. Dean (i/c)
Pondicherry University
College Development Council
Administrative Building
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copy to
The Registrar Judicial
High Court Madras

+1 cc to Mr.Stalin Abhimanyu Advocte sr 514
+1 cc ot Mr.V.B.Perumal Raj Advocate sr 493

W.A. No.3 of 2017

aa04/01/2017