

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.2872 of 2017

S.R.Trust
Rep. by its Trustee,
C.Kamini Gurushankar.

... Petitioner

Vs

1.The Principal Secretary,
Ministry of Health and Family Welfare,
Government of Tamilnadu,
Secretariat, Chennai - 9.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 herein to consider and pass orders on the application dated 24.08.2016 filed by the petitioner to start Meenakshi College of Nursing with an intake of 60 seats per year from the academic year 2017-2018 at Kotagudi Village, Melur Taluk, Madurai District.

For Petitioner : Mr.K.Subramanian, SC
for Mr.S.Punniyakotti

For Respondents : Mr.S.Rajeswaran, Sp.G.P

ORDER

The prayer made in the writ petition is to issue a Writ of Mandamus, directing the respondents 1 and 2 to consider and pass orders on the application dated 24.08.2016 filed by the petitioner seeking to start Meenakshi College of Nursing with an intake of 60 seats per year from the Academic Year 2017-2018 at Kotagudi Village, Melur Taluk, Madurai District.

2. It is the case of the petitioner that they are the registered Public Trust. With a view to construct a nursing college in its land in S.Nos.245 and 247/1A of Kottakudi Village and Panchayat, Melur Taluk, Madurai District, they had obtained a planning permission from the Deputy Director of Town Planning, Madurai on 30.09.2015. Thereafter, they have made an application dated 24.08.2016 to the first respondent seeking necessary

permission to start a nursing college with an intake of 60 seats per year from the Academic Year 2017-18. On receipt of the same, the Additional Secretary to the Government, Ministry of Health and Family Welfare Department, has forwarded the same to the second respondent, who, in turn, ordered inspection by constituting a team consisting of (i) Dean, Madurai Medical College and (ii) Principal, College of Nursing, Madurai Medical College, Madurai, to inspect the premises in question. Accordingly, the team made inspection on 04.10.2016 and submitted their report dated 06.10.2016 to the second respondent, recommending the proposal of the petitioner to start the nursing college. Even after receipt of the inspection report, the Government has not issued necessary certificate to the petitioner, enabling them to submit the same along with the proposal to the Indian Nursing Council for getting affiliation. Therefore, the petitioner is before this Court with the present writ petition for the above stated relief.

3. Learned senior counsel would contend that though the petitioner has made an application on 24.08.2016 seeking permission to start a nursing college from the Academic year 2017-18 and the inspection report was also submitted by the Committee, recommending the same on 06.10.2016, the Government has not issued Essentiality certificate/no objection certificate in time, so as to enable the petitioner to get affiliation from Indian Nursing Council. Learned senior counsel would further contend that the petitioner had already made an application for starting a B.Sc(Nursing) program from the Academic Year 2016-17. However, by order dated 29.04.2016 the second respondent had returned the said application on the ground that the cut-off date for admission was 31.12.2015 and had directed the petitioner to renew the proposal from the Academic year 2017-18 afresh. Accordingly, the petitioner has made the application dated 24.08.2016. In view of the delay and inaction on the part of the Government, the petitioner is unable to submit the proposal to the Indian Nursing Council within the time limit seeking affiliation for starting the College and consequently, they may have to lose one academic year. Therefore, learned counsel prayed for speedy action on the part of the respondents. In support of the relief sought for herein, learned senior counsel would rely on a Division Bench decision of this Court reported in (2006) 4 CTC 162 (Vinayaka Missions's College of Nursing and Para-Medical Sciences v. The Tamil Nadu Nurses and Midwives Council).

4. Learned Special Government Pleader appearing for the respondents would submit that after receipt of the inspection report the respondents are in the process of issuing necessary certificate to the petitioner.

5. Heard both sides and perused the records.

6. The facts made available herein would reveal that the petitioner had already made an application dated 23.10.2015 seeking permission to start B.Sc (Nursing) course from the Academic Year 2016-17, which was returned by the second

respondent, by order dated 29.04.2016 stating that the cut off date for submission of said proposal to Indian Nursing Council has already been over. However, in the said order, the petitioner was requested to renew the proposal from the Academic Year 2017-18. Accordingly, the petitioner made the application on 24.08.2016 well within the time. On receipt of the same, inspection was ordered and the same was done by a committee constituted by the second respondent and inspection report was also sent to the second respondent on 06.10.2016, recommending the proposal submitted by the petitioner, seeking permission to start a Nursing College from the Academic Year 2017-18. Even thereafter, the Government has not issued necessary certificate to the petitioner, which compelled them to approach this court with the present writ petition.

7. According to the learned senior counsel for the petitioner, the delay on the part of the Government in issuing Essentiality certificate/ no objection certificate will literally force the petitioner to lose one more academic year for starting a Nursing College. Learned Senior counsel by relying on the judgment of this Court reported in (2006) 4 CTC 162 (cited supra), sought for early issuance of the necessary certificate by the respondents. It is the submission of the learned Special Government Pleader that after receipt of the inspection report, due process is going on with respect to the request of the petitioner.

8. In the decision cited on the side of the petitioner, the Division Bench of this Court has observed thus:

"20. Admittedly, the Indian Nursing Council and the Tamil Nadu Nursing and Midwives Council granted recognitions for the B.Sc (Nursing) course for the academic years 2002-2003, 2003-2004 and 2004-2005. Hence the first respondent is duty bound to consider the request of the appellant for the grant of affiliation, otherwise the grant of recognition by the competent authorities will be set at naught. The Central Nursing Council, State Nursing Council and the University must coordinate to carry out the object of smooth functioning of the Institutions, failing which the grant of recognition by the Competent authorities will not have any effect and the interest of the students and the Institution will be in jeopardy. The stand of the first respondent that the appellant should have applied before 15th August of the preceding year without the recognition by the competent authorities is an impossibility of performance. While disposing of W.P. No. 10850 of 2004 , K. P.Sivasubramaniam, J. in paragraphs 20 and 21 observed as follows:

20. While parting with this case, it would be appropriate to place on record the total unsustainability of the methodology adopted by the various

authorities who are involved in the grant of permission / sanction / affiliation, etc., for starting a professional college / courses, namely, Medical dental, Nursing, Teachers' Training, Engineering, Technical, etc. when the Government is not able to run such educational Institutions and the right of education being recognised as a fundamental right, the need of imparting education through private sector had become inevitable and a recognised feature. But, in order to see to it that the private sector does not exploit the situation commercially and in an unconscionable manner and to ensure proper standards, many regulations have been formulated to control the fee structure, to ensure all infrastructural facilities, staff pattern, etc., before and after the institution is allowed to admit the students and commence its functioning. In the said process, necessarily different authorities are involved such as Central and State Governments, Governing Councils like the Medical Council, Dental Council, AICTE, etc., and the University. No doubt, these authorities have to act independently in their own spheres and according to their own standards. But it should not be forgotten that they are statutory authorities discharging the functions of one single entity, namely, the Sovereign Government. The various authorities above-mentioned are part and parcel of that single entity and they function differently only for administrative reasons and due to division of labour. But the unfortunate outcome of such division of labour is the impossible and impracticable situations and requirements which the applying institution has to face for establishing itself. Which authority is to be approached first, second third or last is a question which no one can answer. But one thing is sure. "A: authority would require the approval by "B", "C" and "D" authorities, while "B" authority would require approval / permission by the other three authorities and likewise in the case of "C" and "D" authorities. I ask myself the question as to how this could be possible at all and where is the need for such a requirement. The applying institution is expected to successfully complete this jugglery, after

having invested several lakhs of rupees only to find at last being told that students cannot be admitted for the particular academic year. This situation inevitably leads to redtapism, corruption, favouritism and inconsistent orders being passed in favour of and against different institutions by adopting different yardsticks. This rigmarole is going on for the past many years, flooding the Courts with petitions where it is also found that innocent students are caught in this confusion. They already have a frightening and competitive future ahead of them and even at Page 1920 the threshold of their professional education, they are subjected to painful suspense and many times, are forced to loose money and valuable years when they are told that the institution in which they are admitted is not yet recognised or affiliated. Take for instance this case itself where the Government of Pondicherry itself directs the College to admit the students, while the University states that they cannot affiliate, as the application was belated. If only simultaneous applications are made possible, this problem would not have arisen at all. When the petitioning College is required to approach the University only after the Essentiality Certificate is given by the Government, it results in unnecessary delay and the requirement that the application for affiliation should have been made on or before 15th of August of the previous year itself is rendered impossible. Further, it is also seen that while the Indian Nursing Council grants permission on 20.9.2003, the Tamil Nadu Nursing Council points out certain defects and ultimately grants its approval only on 11.5.2004. It is baffling to find that both the Nursing Councils should be involved though they operate only on the same field, but both of them have different approach regarding the infrastructural requirements.

21. Who is responsible for this situation and is it such a complicated issue to evade solution by the educational authorities It should be certainly possible to evolve a methodology by which the applying institution would be required to present its application before all the authorities simultaneously, something in the nature of a single window system and a

time limit for all the authorities to pass orders for directions to rectify the defects, if any, and to comply with the requirements."

9. Thus, if the case of the petitioner is viewed, in the light of the above observation, this Court is of the opinion that it is duty of the respondents to consider the request of the petitioner within the time limit, failing which, the petitioner may have to lose one more academic year. Therefore, this Court directs the respondents to consider the representation of the petitioner dated 24.08.2016 and pass appropriate orders with regard to issuance of necessary certificate, in the light of the inspection report dated 06.10.2016 submitted by the Committee. The said exercise shall be completed within a period of three weeks from the date of receipt of copy of this order.

10. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary,
Ministry of Health and Family Welfare,
Government of Tamilnadu,
Secretariat, Chennai - 9.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.

+1cc to Mr.S.Puniyakotti Sr.7357

+1cc to Government Pleader sr.7797

W.P.No.2872 of 2017

pvs(co)
ss(15/02/2017)