

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.10635 OF 2017**

Kisan S/o Laxman Gaikwad,
Age 61 years, Occ.Retired,
R/o Plot No.1, Gut No.39,
Ramgopal Nagar, Nashik Road,
Padhegaon, Aurangabad,
Tq. and Dist.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 Indian Nursing Council,
8th floor, NBCC Centre,
Plot No.2, Community Centre,
Phase-I, Adjacent to Crown Plaza
Hotel, New Delhi-110 020,
through its Secretary.

3. Delhi Nursing Council,
Ahilyabai College of Nursing
Building, Lok Nayak Hospital,
New Delhi-110 002,
through its Registrar.

4. Mrs.(Dr.) Asha Sharma,
Age 69 years, Occ.Public
Servant, Vice President,
Indian Nursing Council,
8th floor, NBCC Centre,
Plot No.2, Community Centre,
Phase-I, Adjacent to Crown
Plaza Hotel, New Delhi-110020. ... Respondents.

Mr.A.D.Shinde, advocate for the petitioner.
Mr.Bhushan Kulkarni, advocate for the Respondent
Nos.1 and 3.
Mr.Alok Sharma, advocate for Respondent Nos.2 and
4.

...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

**Reserved on : 23.04.2018.
Pronounced on : 08.06.2018.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioner seeks declaration that the post held by the Respondent No.4 as Vice President and Member of Respondent No.2 Indian Nursing Council is void and illegal and seeks writ of quo-warranto to quash and set aside the Membership of Respondent No.4 of Indian Nursing Council and so also as Vice President of Respondent No.2.

2. Mr.A.D.Shinde, learned counsel for petitioner submits that Respondent No.4 is holding the post of Vice President of Indian Nursing Council, claiming to be nominated U/s 3 1(a) of the Indian Nursing Council Act, 1947. The

learned counsel submits that the date of birth of Respondent No.4 is 3.5.1947. The Respondent No.4 has crossed age of 65 years and stands disqualified as per Section 4(8)(e) of the Delhi Nursing Council Act, 1997. According to the learned counsel, the Respondents are not taking any action against Respondent No.4 though the Respondent No.4 has crossed the upper age of 65 years. The Respondent No.1 passed an order on 14.7.2017, thereby rejecting the representation of the petitioner challenging the election/nomination of Respondent No.4 as a Vice President and Member of Indian Nursing Council. The Respondents have misconstrued the provisions of Delhi Nursing Council Act and the Indian Nursing Council Act. The learned counsel submits that the moment the Respondent No.4 is disqualified from holding the post, this Court can intervene and set aside the nomination of Respondent No.4. To buttress his submission, the learned counsel relies on the judgment of the Apex Court in a case of **"Rajesh Awasthi Vs. Nand Lal Jaiswal and others"** reported in **2012 (6) All M.R.977** and further submits that the petitioner

would be entitled to maintain this petition seeking writ of quo warranto. The learned counsel also relies on the judgment of the Division Bench of this Court in case of **"Amar Sinh S/o Shivajirao Pandit Vs. The State of Maharashtra and others"** reported in **1998 (2) Bom. C.R. 575** and in a case of **"Dyaneshwar Narso Naik Vs. State of Goa and others"** reported in **2014 (6) Bom.C.R.434**.

3. Learned counsel for respective Respondents controvert the argument of the petitioner and submit that the upper age limit as prescribed U/s 4(8)(e) is for a person being elected, nominated and/or for continuing as a Member of Delhi Nursing Council. For being a Member or holding the post of Vice President of Indian Nursing Council, no upper age limit is prescribed. The name of Respondent No.4 appears in the Register of Nurses maintained by the Delhi Nursing Council and was elected by the Delhi Nursing Council to the Indian Nursing Council as per Section 3(1)(a). The successor has not been elected or nominated by the Delhi Nursing Council

and as such Respondent No.4 can continue until the successor is duly elected or nominated. The Respondent No.1 has considered all these aspects and has negatived the contention of the petitioner.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The gravamen of the petitioner's case is that the Respondent No.4 has crossed the maximum age limit of 65 years and as such is disqualified to hold the post of Vice President and/or Member of Indian Nursing Council.

6. Before we advert to the contentions of the respective parties, it will be appropriate to consider the scheme of the Delhi Nursing Council Act, 1997 (hereinafter referred to as Act of 1997) and the Indian Nursing Council Act, 1947 (hereinafter referred to as Act of 1947).

7. Section 2(k) of the 1997 Act, defines

Nurse and states that Nurse means a person who possesses a certificate in nursing and midwifery from an institution recognised in this behalf and registered with the Council. Section 2(n) of the Act 1997 states that the "Register" means a register maintained U/s 15. It is not disputed by any of the parties that the name of Respondent No.4 appears in the Register maintained U/s 15 of the Delhi Nursing Council Act. It is also not a matter of debate that at the relevant time when the Respondent No.4 was nominated by the Delhi Nursing Council to the Indian Nursing Council, the Respondent No.4 was well within 65 years of age.

8. Section 3 of the Indian Nursing Council Act, 1947 provides for the constitution and composition of the Council. As per Section 3 (1) (a) one of the Members of the Indian Nursing Council is one nurse enrolled in a State register elected by each State Council. As observed above, the Respondent No.4 is a Nurse enrolled in a State register and is elected by the State Council. Section 6 of the Indian Nursing Council

Act, 1947 provides that an elected or nominated member, other than the nominated President shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.

9. It is a fact that the Delhi Nursing Council has not elected/nominated any Member to the Indian Nursing Council in place of Respondent No.4. In view of Section 6(1) of the Act 1947, the Respondent No.4 can continue until her successor has been duly elected or nominated by the Delhi Nursing Council.

10. The upper age limit of 65 years prescribed U/s 4(8)(e) of Delhi Nursing Council Act 1997 will apply for a person elected or nominated or continue as a Member of Delhi Nursing Council. The Respondent No.4 is nominated/elected from the category of a Nurse enrolled in a State register. The case of the petitioner would have been valid, had the Respondent No.4 being continued elected or

nominated to the Delhi Nursing Council. The upper age limit to continue as a Member is not provided under the Indian Nursing Council Act, 1947 for being Member of Indian Nursing Council.

11. It appears that since many years the successor of Respondent No.4 is not elected or nominated by the Delhi Nursing Council as required U/s 3 (1) (a) and in view of Section 6(1) the Respondent No.4 is continued until her successor is elected or nominated. We had asked the learned advocate for the Delhi Nursing Council, as to why for more than 10 years, no person is nominated. The Respondent No.3 filed additional reply affidavit to the effect that the Government of NCT of Delhi issued a notification dated 21.7.2017 constituting the Delhi Nursing Council with the names of the members of the newly constituted body. One of the member Mrs.Santosh Mehta, was about to get disqualified after two days for continuing as member as she would be completing 65 years of age. The re-election was conducted from the Colleges of Nursing and after re-election, name of elected

member Dr.(Mrs.) Harinderjeet Goyal, was submitted to the Government of NCT, Delhi vide letter dated 6.2.2018 for necessary action on their part, so that Delhi Nursing Council can conduct the election of President, Vice President and Executive members. The notification is still awaited. The affidavit further states that once Government of Delhi notifies the constitution of Delhi Nursing Council with necessary changes in the list of members, the General Body Members of Delhi Nursing Council would conduct the election of President, Vice President and Executive Committee members and would discuss various agenda's including holding of election of one member for Indian Nursing Council U/s 3(1)(a) of Indian Nursing Council Act, 1997. It is high time, Delhi Nursing Council takes immediate steps in that regard. We hope and trust that the Delhi Nursing Council shall take immediate steps as reflected in their additional affidavit-in-reply. In view of the above, no relief can be granted to the petitioner.

12. The Writ Petition accordingly stands

disposed of. No costs.

Sd/-

(A.M.DHAVAL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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