

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9963 OF 2014

Smt. Indumati Tukaram Thorat,
Age : 58 Years, Occu. : Service,
R/o Near Goganath Mandir,
Begumpura, Aurangabad
District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary for
Medical Education & Drugs Department,
Mantralaya, Mumbai.
2. The Advocate General
of State of Maharashtra
Having his office in the
High Court campus
High Court of Bombay,
Fort, Mumbai - 32.
3. The Maharashtra Nursing Council,
E. S. I. S. Hospital Compound
Nurses Hostel, IIInd Floor,
L.B.S. Marg, Mulund (West)
Mumbai through its Registrar
4. The Returning Officer
To the Election of Maharashtra
Nursing Council, Elections 2014
Having his office at
E. S. I. S. Hospital Compound
Nurses Hostel, IIInd Floor,

L.B.S. Marg, Mulund (West)
Mumbai.

5. The Indian Nursing Council
Combined Council Building,
Kotla Road, Temple Lane,
New Delhi 110 002
Through its Secretary .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri Ashwin V. Hon,
Advocate for the Petitioner.

Shri S. B. Talekar, Special Counsel for Respondent Nos. 1, 2 and
4.

Shri Chandrakant A. Jadhav, Advocate for the Respondent No. 3.
Shri Alok Sharma, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

Closed for Judgment on : 27.11.2017

Judgment Pronounced on : 31.01.2018

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

. The petitioner assails the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013, so also has challenged the election programme published as per the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013.

2. The Maharashtra State Board of Nursing and Paramedical

Education Act, 2013 (for the sake of brevity hereinafter referred as to the “2013 Act”) was enacted and came into effect on 21st August, 2013. The 2013 Act has amended the Maharashtra Nurses Act, 1966 (for the sake brevity hereinafter referred as to the “1966 Act”) to the extent and in the manner specified in the Scheduled II appended to the 2013 Act.

3. The petitioner claimed to be an elected member of the Maharashtra Nursing Council Body from trained nurses assistants constituency. The petition is basically filed on the premise that because of the 2013 Act amending the provisions of the 1966 Act, there would only be one representation from three regions as against five representations for nurses provided under the 1966 Act.

4. Mr. Hon, the learned senior advocate for the petitioner submits that, the respondents while enacting 2013 Act have amended the provisions of the 1966 Act. Some of the provisions of the 1966 Act have been deleted. The five members who are to be elected from matrons of affiliated institutions are restricted to only one member under the 2013 Act. So also as per the 1966 Act, five representations of nurses were allowed, now there is only one representation from three regions and two regions are not included. The 2013 Act was enacted with an aim and object to delete or amend the provisions of the 1966 Act. According to

the learned senior advocate the members of the council, who were elected as per the democratic process and were given powers, those powers are now withdrawn and board constituted under the 2013 Act are given power, which were earlier performed by members of the council.

5. It is further submitted that, the 2013 Act is constituted in such a manner that it gives representations to the Minister and the Government officials from Medical Department. As per the 1966 Act, governing council was given equitable representation and the elections of the President and Vice President were contemplated. However, under the 2013 Act, there is no such procedure, but entire powers are given to the State Government in making appointment and no elections are contemplated. It is further contended by the learned senior advocate that, because of the 2013 Act, the democratic process of election assured to nurses in the 1966 Act is taken away. The Government has absolute power to appoint and nominate members of their choice under the 2013 Act. The democratic set up is destroyed by taking away provisions of election and all powers are given to governing council consisting of nominated and appointed Government officials. The protection under the Constitution is denied to the nurses and, their representatives to control and manage own affairs of nursing profession. It is further submitted that, in the past all amendments relating to 1966 Act had received assent of

the Hon'ble President and 2013 Act is not assented by the Hon'ble President, as such the new Act does not have any sanctity. The provisions of the Constitution and more particularly Article 246 read with VIIth Schedule of the Constitution have been violated, on this ground also the enactment of 2013 is bad in law. The due procedure of inviting claims and objections before enactment of the 2013 Act was not complied with. The Maharashtra Nursing Council was not served with any notice. Therefore, entire enactment of 2013 would stand vitiated. One of the contentions of the learned senior advocate for the petitioner is that, in 2013 Act, the State Government has clubbed together the nursing and paramedical education. This clubbing is without any basis, as a result of which the 1966 Act is virtually made redundant. The paramedical courses are independent and cannot be clubbed with nursing courses. There is no rational behind clubbing together these courses. It is unreasonable and without valid purpose. The learned senior advocate relies on the judgment of the Apex Court in a case of **State of Maharashtra Vs. Central Provinces Manganese Ore Co. Ltd.** reported in (1977) 1 SCC 643 to submit that, substitution by an amending Act cannot be spilt into two processes, one of repeal and another of substitution and without assent of the Hon'ble President, the amendment would be void. The learned senior advocate also relies on the judgment of the Apex Court in a case of **Koteswar Vitthl Kamath Vs. K. Rangappa**

Balinga and Co. reported in (1969) 1 SCC 255 and another judgment of the Apex Court in a case of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras reported in (1964) 1 M. L. J. 115.

6. Mr. Talekar, the learned Special Counsel for respondent Nos. 1, 2 and 4 submits that, it is within the domain of the State legislature either to pass a new Act or to amend the existing Act so as to bring about the changes in it. The act of the State legislature can be challenged only on the ground that the State legislature lacks legislative competence and/or it violates the provisions of the Constitution of India.

7. The learned Special Counsel further submits that, there were certain deficiencies in the 1966 Act. The elected body of Maharashtra Nursing Council under the 1966 Act was indulging in several illegal acts. The Government of Maharashtra in order to regulate matters pertaining to diploma level nursing and paramedical education in the State of Maharashtra decided to establish State Board under the 2013 Act. The nurses are given representation to the extent it is necessary in the constitution of the board as contemplated U/Sec. 5 of the 2013 Act. The number of representatives can increase or decrease. The State of Maharashtra is one single constituency and no region wise representation is provided. The 2013 Act does not destroy the democratic structure merely because the representation given to

the nurses is reduced from five to three. The State Government is seeking recommendation U/Sec. 10(2) of the Indian Nursing Council Act. The implementation of the Act does not depend on the recognition by the authority within Sec. 10(2) of the Indian Nursing Council Act. The incorporation of paramedical courses along with nursing course would not lead to loss of status of nursing as a profession. The learned special counsel further submits that, the State legislature is well within its powers to regulate the matters pertaining to the development of nursing and paramedical education in the State of Maharashtra. There is no conflict between the 1966 Act and 2013 Act. The 2013 Act does not violate Article 14 of the Constitution of India. The nursing and paramedical courses are identical. They can be regulated by the common Act. The learned Special Counsel further submits that, the scope of judicial review while considering validity of a particular statute would be in narrow compass. The learned special counsel relies on the judgment of the Apex Court in a case of **Binoy Vishwam Vs. Union of India and others** reported in (2017) 7 SCC 59. The learned special counsel further submits that, the right to elect, to be elected are neither fundamental rights, nor common law rights. They are statutory rights. Mere representation being less cannot be any ground to challenge the provisions of the Statute. The learned special counsel relies on the judgment of the Apex Court in a case of **Jyoti Basu and others Vs. Debi Ghosal and others** reported in (1982)

1 SCC 691.

8. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the memo of petition. Upon perusal of the memo of writ petition, it is to be seen that, though the petitioner has assailed the amendment to the 1966 Act by virtue of introduction of 2013 Act, the petition does not specifically demonstrate the provisions which the petitioner seeks to challenge or seeks to be declared as unconstitutional. A sweeping prayer is made in the petition to declare the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act 2013 as unconstitutional, however, has not detailed in the memo of the petition the provisions which she has assailed on the ground of they being unconstitutional. The memo of petition is basically revolving around constitution of the Maharashtra Nursing Council under the 1966 Act and revocation of representation to the nurses in view of enactment of 2013 Act. It is also on the premise that under the 2013 Act nominated members are appointed on governing council in place of elected members in the nursing council.

9. The validity of a statute and/or the provisions of the statute can be challenged only on two grounds, one the legislature lacks the competence to enact the statute and second the statute

and/or provisions enacted therein are violative of Article 14 of the Constitution of India and/or the provisions of the Constitution.

10. The preamble of the 1966 Act states that, it is expedient to unify and make better provision in the law regulating registration and training of nurses in the State of Maharashtra and to provide for the matters connected with the purpose aforesaid. The 2013 Act is enacted with a view to provide for establishment of a State Board to regulate matters pertaining to the diploma level nursing and paramedical education in the State of Maharashtra and for matters connected therewith or incidental thereto.

The purpose and the area of operation of 1966 Act and 2013 Act is distinct. The 1966 Act is basically meant for regulating registration and training of nurses in the State of Maharashtra, whereas 2013 Act is enacted to provide for establishment of State Board to regulate matters pertaining to diploma level nursing and paramedical education in the State of Maharashtra.

11. Under the 2013 Act, the provisions of 1966 Act are amended to the extent and in the manner specified in IIInd schedule. The IIInd Schedule to 2013 Act reads thus :

SCHEDULE II
(See section 51)

In the Maharashtra Nurses Act, 1966,—

(a) in section 2,—

(i) in clause (a), after the words "the by-laws", the following shall be added, namely:—

" or, as the case may be, affiliated to the Maharashtra State Board of Nursing and Paramedical Education in accordance with the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013 and the bye-laws made thereunder";

(ii) clause (e) shall be deleted;

(iii) in clause (o), after the words "the by-laws", the following shall be added, namely:—

" or, as the case may be, recognized by the Maharashtra State Board of Nursing and Paramedical Education in accordance with the provisions of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013 and the bye-laws made thereunder";

(iv) in clause (p), the word "five" shall be deleted;

(b) in section 3, in sub-section (3), in clause (b),—

(i) for sub-clause (i), the following shall be substituted, namely :—

"(i) one member, from each of the three Regions, to be elected by the nurses registered in the Register under the relevant Region, from amongst themselves;";

(ii) sub-clause (ii) shall be deleted;

(iii) for sub-clause (iii), the following shall be substituted, namely :—

"(iii) one member, to be elected by matrons of the affiliated institutions, from amongst themselves;";

(iv) for sub-clause (iv), the following shall be substituted, namely :—

"(iv) one member, from each of the three Regions, to be elected by the sister tutors and

clinical instructors of the affiliated institutions, from amongst themselves;";

(v) for sub-clause (vii), the following shall be substituted, namely :-

"(vii) one member, to be elected by the Heads (Principals) of recognized colleges or schools of Nursing including Institutions of Nursing Education in the Maharashtra, from amongst themselves;";

(c) in section 10, clauses (e), (f), (g), (h), (i), (j), (k) and (l) shall be deleted ;

(d) section 12 shall be deleted;

(e) in section 13, the words " the Examination Board and of " shall be deleted;

(f) in section 14, in sub-section (2), clause (c) shall be deleted;

(g) in section 15, in sub-section (6), the words "and of the Examination Board" shall be deleted;

(h) the Heading "CHAPTER IV – RECOGNITION OF TRAINING INSTITUTIONS AND AFFILIATION OF INSTITUTIONS", and sections 25 and 26, shall be deleted;

(i) in section 38, in sub-section (2), clause (e) shall be deleted;

(j) in section 39, for sub-section (1), the following sub-section shall be substituted, namely :-

"(1) The Council may, with the previous sanction of the State Government, make by-laws, not inconsistent with the provisions of this Act or the rules made thereunder, for such matters as may be necessary for the exercise of the powers and performance of duties and functions by the Council under this Act.";

(k) for the SCHEDULE, the following shall be substituted, namely:-

"SCHEDULE

[See clause (p) of section 2]

Sr. No.	Name of the Region	Area comprised in the Region
(1)	(2)	(3)
1.	Marathwada	Districts of Aurangabad, Beed, Hingoli, Jalana, Latur, Nanded, Parbhani and

2.	Vidharbha	Usmanabad. Districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Gondia, Nagpur, Wardha, Washim and Yavatmal.
3.	Rest of Maharashtra	Districts of Ahmednagar, Dhule, Jalgaon, Kolhapur, Mumbai, Nandurbar, Nashik, Pune, Raigad, Ratnagiri, Sangli, Satara, Sindhudurg and Solapur.".

12. It is clear that, by introducing 2013 Act, some of the provisions of the 1966 Act are deleted. By virtue of the amendment, the constitution of the nursing council has undergone change. So also the powers of the Nursing Council under 1966 Act to grant recognition to training institution and affiliation to the institution have been withdrawn. The petitioner basically is aggrieved of this count.

13. The nursing is a subject in the concurrent list. The Parliament has enacted Indian Nursing Council Act, 1947. It is not the case of the petitioner that, the 2013 Act is in any manner repugnant to the Indian Nursing Council Act, 1947 or any provision thereof. The State Legislature is competent to enact the law governing education in nursing and para medical education to the extent it is not inconsistent with the provisions of the Indian Nursing Council Act and the matters connected therein.

14. As far as legislative competence of the State Legislature is concerned, there is no dispute about it. The State Legislature is competent to enact the laws governing the education for nurses and paramedical courses and matters incidental thereto.

15. Placing the 1966 Act and the 2013 Act in-juxta position, it would be clear that, both the acts do not over lap and would exist independently. The 2013 Act would basically be concerned with the diploma level education for nursing and paramedical courses and the board of governing council constituted thereunder especially the apex body to control and manage the matters pertaining to diploma level nursing and paramedical education and the examination at the State level. The powers and duties of the governing council are detailed in Sec. 23 of the 2013 Act. Amongst the other powers, it can determine the syllabus and curriculum for diploma level nursing and paramedical courses for all categories, award certificates to the candidates who have passed diploma final examination and grant permission and affiliation to the institutions, so also withdraw affiliation and recognition granted to the institutions. The 1966 Act provides for the constitution of the Maharashtra Nursing Council and the council for maintaining register of nurses for the State. Conduct and hold an enquiry and if it finds any misconduct on the part of nurses, to remove the name of the nurse from the list and the register. The council under the Act of 1966 has the power to

grant license to the nurses to carry on any nurses establishment. The nurses entitled to practice would be under the control of licensing authority under the 1966 Act. So the power of the council under the 1966 Act would operate after the education of nursing course is complete and will have power to register the nurses and deal with the matters from registration of nurses, granting of license to the nurses establishment and to remove from the list of the names of nurses upon any misconduct committed by the nurses.

16. The role of the board and the governing council constituted under the 2013 Act and the council constituted under the 1966 Act is separate and distinct. The operation of the 1966 Act and 2013 Act are separate and distinct and the provisions therein do not overlap. It was within the legislative competence of the State legislature to enact 2013 Act and while doing so, amend the provisions of the 1966 Act by virtue of which both the Acts operate in different and independent spheres and the area of operation would not overlap. No illegality has been committed while amending the 1966 Act by enacting 2013 Act, nor any constitutional provisions are violated.

17. The Act is passed by the State legislature, as such the assent of the Governor has been obtained. It is not clarified by the petitioner as to how the 2013 Act would be nonest without

assent of the President. The Act is not inconsistent with the Central enactment viz Indian Nursing Council Act, 1947. Article 254 of the Constitution of India is not violated, as there is no inconsistency between the law made by the Parliament and the 2013 Act.

18. In view of the aforesaid, the challenge to the constitutional validity of the 2013 Act fails. The writ petition is dismissed. No costs.

Sd/-
[S. M. GAVHANE, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

19. At this stage, Mr Hon, the learned advocate for the petitioner seeks continuation of interim relief for further period of four weeks. The learned A. G. P. opposes the said request.

20. The petitioner was only from nursing constituency, we have already upheld the validity of the Act. In view of that, we are not inclined to consider the prayer of the petitioner for continuation of interim relief.

Sd/-
[S. M. GAVHANE, J.]

Sd/-
[S. V. GANGAPURWALA, J.]