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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19.07.2018

W.P.(C) 4078/2013

**SRI BALAJI ACTION MEDICAL INSTITUTE (A UNIT OF LALA
MUNNI LAL MANGE RAM CHARITABLE TRUST) Petitioner**

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R.P. Pahwa, Advocate

For the Respondents : Mr. V.S.R. Krishna and Mr. V. Shashank Kumar, Advocates for R-2
Mr. Praveen Khattar and Mr. Bapi Das, Advocates for R-4

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India, *inter alia*, seeks issuance of a writ of mandamus directing the official respondents to restore the approval granted by the respondent No.2/Indian Nursing Council (for short 'INC') to the petitioner institute vide its letter reference File No.02/JUL/2012 dated 05.07.2012 with all their attendant benefits, recognitions etc. for the nursing students admitted by the petitioner institute for the academic year 2012-13.

2. In this behalf, it must be observed that the remaining prayers have been rendered infructuous during the pendency of the proceedings.
3. The short question that arises for consideration in the present proceedings is that the INC vide its letter dated 05.07.2012, permitted the petitioner institute to conduct the General Nursing and Midwifery (for short 'GNM') program with an intake of thirty seats for the academic year 2012-13, subject to the approval from the State Nursing Council and the University/Board.

“INDIAN NURSING COUNCIL
COMBINED COUNCILS BUILDING
KOTLA ROAD, TEMPLE LANE
NEW DELHI-110002

File No.02/JUL/2012

Date: 05/07/2012

To,

The Principal,
Sri Balaji Action Medical Institute
Fc-34, A-4
Paschim Vihar, New Delhi-110063

Subject: Status of Sri Balaji Action Medical Institute, Fc-34, A-4,
Paschim Vihar, New Delhi-110063-Reg.

Sir/Madam,

The Indian Nursing Council conducted inspection of your institution for GNM programme on 14-15/06/2012.

The Institution is **permitted/Suitable for GNM** programme with an intake of **30 (THIRTY)** seats subject to the approval of State Nursing Council and University/Board for 2012-13 academic year.

Yours faithfully,

SECRETARY”

4. A perusal of the said communication dated 05.07.2012 clearly reveals that the said permission was granted to the petitioner institute, pursuant to an inspection of the latter, conducted by the INC on 14-15th June, 2012.
5. The petitioner institute had also obtained a certificate of consent from the Delhi Nursing Council dated 18.05.2012.
6. The Government of National Capital Territory of Delhi had already issued a NOC to the petitioner institute vide communication dated 10.05.2012, file No.F.1(312)/TRC/H&FW/20011/15445-49, the same is reproduced hereinunder for the sake of felicity:

“DELHI NURSING COUNCIL

An Autonomous Body of Govt. of Delhi

Ahilya Bai College of Nursing Building, Lok

Nayak Hospital, New Delhi-110002, Tel.

:23238304, Telefax:23231633

E-mail:

registrardelhinursingcouncil@yahoo.co.in

Ref No.F.5(1)(1) /DNC/2012/789/790

18.05.12

Dated

CERTIFICATE OF CONSENT

It is hereby certified that the application of School of Nursing **Sri Balaji Action Medical Institute, FC-34, A-4, Paschim Vihar, New Delhi-110063** for the starting of **General Nursing and Midwifery** programme has been received in the office of Delhi Nursing Council.

Delhi Nursing Council consents to opening of School of Nursing at **Sri Balaji Action Medical Institute, FC-34, A-4, Paschim Vihar, New Delhi-110063** for the starting of General Nursing & Midwifery programme in view of receipt of NOC/essentiality certificate dated 10.05.2012 from Govt. of NCT of Delhi.

The issue of the certificate of consent alone shall not confer any right on the applicant college/school to start the General Nursing and Midwifery programme.

This Certificate is valid for a period of one year from the date of issue.

(Mrs. Sneh Lata Manocha)
Registrar

Copy to: The Principal Secretary, Department of Health & Family Welfare, 9th level, A-wing, Delhi Secretariat, New Delhi-110002”

7. The petitioner is aggrieved by the subsequent action of INC whereby, vide communication dated 07.09.2012, the latter withdrew the permission granted to them in the following manner:

“ Please refer to your letter number SBAMI/MS/2012/1894 dated 13th August, 2012 on the above subject; as the institution has not submitted Govt. order in time and by oversight by the dealing person the inspection was conducted and the institution was permitted for 2012-13. We are hereby withdrawn the affiliation for 2012-13, however your institute is permitted for the year 2013-14.”

8. Learned counsel appearing on behalf of the petitioner states that, in terms of the permission granted to them as aforementioned, the petitioner institution had completed the process of intake of the prescribed number of students from 01.08.2012.
9. It is an admitted position that, the said students have since completed the course of instruction and have been declared successful.
10. It is, therefore, prayed that unless the approval granted by the INC, which has since been withdrawn vide the impugned communication, is restored along with all consequential reliefs, the careers of all the nursing graduates admitted by the petitioner institute for the academic year 2012-13 would be placed in jeopardy.
11. On a contrary, it is urged on behalf of the INC that, in terms of the directions issued by this Court in W.P.(C) 2317/2013 dated 26.04.2013 and W.P. (C) 3880/2013 dated 31.05.2013, filed on behalf of the students and the petitioner institute herein respectively; they had determined the representations that had been filed on behalf of the latter and directed as follows:

“WHEREAS a perusal of the case of Sri Balaji would reveal that the essentiality certificate has been issued to the institute by the Government of NCT of Delhi on 10.05.2012. In terms of the calendar of events dated 09.09.2011 issued by the Indian Nursing Council the last date for receipt of completed proposals for opening of new nursing institutions for the academic year 2012-2013 is 29.02.2012 with penalty. Since Sri Balaji Institute received the NOC after the cut-off date prescribed by Indian Nursing Council, the case of Sri Balaji

for permission/affiliation could not be granted for the academic year 2012-2013. It is submitted that the Indian Nursing Council, New Delhi strictly abides by the calendar of events issued and in no case any departure is made, lest it may lead to allegations of discrimination and favoritism amongst institutes in other parts of the country. Accordingly it has been decided to withdraw the permission earlier given for the academic year 2012-2013 and necessary orders were issued.

NOW, THEREFORE, keeping in view the above, the representations submitted by Sri Balaji Action Medical Institute, New Delhi stand rejected.”

12. Learned counsel appearing on behalf of the INC would further urge that, in terms of their communication dated 08.08.2012, the permission hitherto granted to the petitioner institute had already been withdrawn since the government order for the subject course had not yet been received by them.
13. In this behalf, it must be observed that the Government of NCT of Delhi, had issued ‘No Objection Certificate’ as aforesaid, to the petitioner institute as far back as on 10.05.2012, along with dispatching a copy thereof to the INC.
14. It is further the INC’s case that, the permission letter granted to the petitioner institute was owing to an oversight by the dealing person as a result of which, the inspection was mistakenly conducted and the permission letter dated 05.07.2012 was wrongly issued.
15. It is therefore submitted that it is in view of the purported delay in the submission of government order for the subject course, and the oversight by the Joint Secretary of the INC that, the approval which was granted

by them to the petitioner permitting intake of 30 students, was later withdrawn.

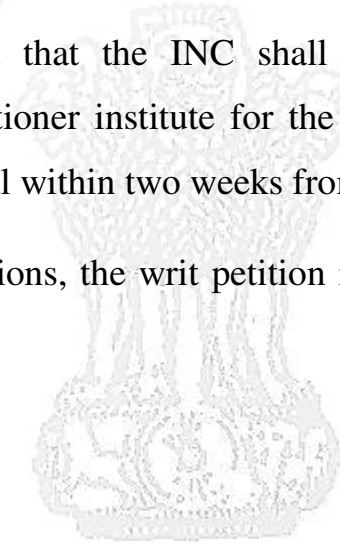
16. It is observed by this Court that, the inspection of the petitioner institute was conducted on 14-15th June, 2012, on which date there was a presumption that the INC had already received a copy of the NOC issued by the GNCTD dated 10.05.2012, a copy of which had been marked to them.

17. Therefore, the INC cannot now be heard to say that the permission granted to the petitioner institute was owing to an oversight by the Joint Secretary or that the withdrawal was justified, in view of the allegedly belated receipt of the NOC from the GNCTD.

18. The INC cannot be permitted to visit the consequences of lapses on their part upon either the petitioner institute or the nursing students who have, in terms of the permission granted to them, completed their course successfully.

19. Mr. Justice Frankfurter in Viteralli vs. Saton reported as **359US535: Law Ed (second series) 1012** enunciated the rule that “An executive agency must be rigorously held to the standards by which it professes its action to be judged. This judicially evolved rule of administrative law is now firmly established and, if we may add, rightly so. He that takes the procedural sword shall perish with the sword.” The Courts, commencing with the decision of the Hon’ble Supreme Court in R.D Shetty vs. International Airport Authority reported as **(1979) 3 SCC 489**, have followed this principle in a catena of decisions.

20. In view of the foregoing, the impugned communication dated 07.09.2012, withdrawing the permission granted to the petitioner institute to conduct the GNM course for the academic year 2012-13 is repugnant in law and the same is accordingly quashed.
21. Further the communication dated 08.08.2012, withdrawing the permission granted vide letter dated 05.07.2012, issued by the INC, on account of the circumstance that the NOC issued by the GNCTD had not been received by them is also set aside and quashed.
22. It is further directed that the INC shall ensure that the grant of permission to the petitioner institute for the academic year 2012-13 is uploaded on their portal within two weeks from today.
23. With the above directions, the writ petition is allowed and disposed of accordingly.



SIDDHARTH MRIDUL
(JUDGE)

JULY 19, 2018
as