

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

WRIT PETITION NO.12842 OF 2018

Vaidyanath Sarvangin Vikas
Prathisthan, through its
President, Dr.Suryakant
Baburao Munde

..Petitioner

Versus

State of Maharashtra and ors.

..Respondents

Mr S.S. Thombre, Advocate for petitioner
Mrs A.V. Gondhalekar, Addl.G.P.for respondents no.1 to 3
Mr A.S. Bayas, Advocate for respondent no.4

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 28.08.2019

ORAL ORDER :

1. We have heard Mr Thombre, learned Counsel for the petitioner.
2. Learned Counsel submits that the petitioner was issued with the essentiality certificate by the Deputy Secretary, Medical Education and Drugs Department, Maharashtra State, Mumbai of intake capacity of 60 students.
3. In the impugned order dated 22.5.2018, the intake capacity was restricted to 30 students. The petitioner is entitled for additional 30 students. Learned Counsel submits that though the essentiality certificate was for 60 students, the petitioner had admitted only 30 students. The respondent has erroneously passed the order not permitting the intake capacity of 60 students. Learned Counsel submits that subsequently, inspection was conducted by the State Government. The petitioner complied with all the requirements. The

petitioner has the necessary infrastructure, staff and the petitioner has made all the required compliance.

4. Mr Bayas, learned Counsel for respondent no.4 submits that the petitioner-institute does not have the necessary staff. There is no order continuing the affiliation to the petitioner-institute.

5. According to Mr Thombre, learned Counsel for the petitioner that approval is granted to the staff appointed. Mrs Gondhalekar, learned Addl.G.P. Submits that the inspection has been made by the respondents. Petitioner has to comply with Part B of G.R. Dated 28.2.2018.

6. The petitioner is already issued with the essentiality certificate and was permitted to admit students. The petitioner admitted 30 students though the essentiality certificate permitted the petitioner to admit 60 students. The essentiality certificate is of the year 2016.

7. The petitioner is already granted permission. Clause VI of the Government Resolution dated 28.2.2018 states that Indian Nursing Council has granted permission for 30 students. The petitioner has relied upon the orders of Apex Court in Civil Appeal nos.12759-12761 of 2017 arising out of SLP (Civil) nos.23346-23348 of 2017. Paragraphs 2 and 4 of the order read thus :-

“2. The learned Single Judge allowed the writ appeal in the following terms :

“16. In the circumstances, I am of the clear view that the petitioners (W.P.Nos.25355-57/2017) are entitled to succeed. In the result, these petitions (W.P.Nos.25355-

57/2017) are allowed. It is declared that the Indian Nursing Council, Respondent no.2 herein, has no authority to grant recognition to the Institutions imparting Nursing courses. The Respondent no.2 is further restrained from publishing on its website, materials indicating that the institutions imparting Nursing courses have to obtain recognition from Respondent no.2 and all such materials from which it could infer recognition is to be obtained from Indian Nursing Council stand withdrawn from Indian Nursing Council stand withdrawn from its website forthwith. W.P. Nos.28383-28385/2017 which is also for the similar relief is accordingly disposed of. Rule issued and made absolute accordingly.

“4. We are of the view that the two parts of the learned Single Judge's order are inextricably inter connected. Once it is declared that the Indian Nursing Council, Respondent no.2 has no authority to grant recognition to the Institutions imparting Nursing Course it must follow that the respondent no.2 is, therefore, restrained from publishing on its website, the material that are indicated. We are, therefore, of the view that the interim order passed by the Division Bench must be set aside and the order of the learned Single Judge restored.

8. The Division Bench of this Court in Writ Petition no.11260 of 2017 under order dated 9.10.2017 had observed that, “Indian National Council has no authority to grant recognition to the institutions imparting nursing training as Auxiliary Nurse and Midwife Course (ANM), General Nursing and Midwifery (GNM), Bachelor of Nursing (B.Sc.) Post Basic Bachelor of Nursing (P.B.B.Sc.) and Master of Nursing (M.Sc.).”

9. As further inspection has already been conducted, the respondent-through its competent authority shall take decision with regard to the intake capacity of the petitioner afresh considering the inspection reports and the other relevant aspects. While taking decision afresh, the impugned order shall not be impediment. The decision shall be taken expeditiously, preferably within six weeks from today.

10. Writ Petition is accordingly disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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