

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2018
PRONOUNCED ON : 03.01.2019
CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.No.5409 of 2018
and
W.M.P.Nos.6665 and 6666 of 2018

A.Sankareswari

... Petitioner

Vs.

- 1.Union of India,
Represented by Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
- 2.Government of Tamil Nadu,
Represented by Secretary to Government,
Ministry of Health and Family Welfare,
St. Fort George, Chennai – 600 009.
- 3.Indian Nursing Council,
Represented by its Secretary,
8th Floor, NBCC Centre,
Plot No.2, Community Center, Okhla Phase-I,
Pocket A, Okhla I, Okhla Industrial Area,
New Delhi, Delhi – 110 020.

4. Tamil Nadu Nurses and Midwives Council,
Represented by its Secretary,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56,
Santhome High Road, Mylapore,
Chennai – 600 004.

5. The Indira Gandhi Open University (IGNOU),
IGNOU Residential Campus Road,
Maidan Garhi,
New Delhi – 110 068.

6. Jawaharlal Institute of Post Graduate
Medical Education & Research (JIPMER),
represented by Director,
Dhanwantari Nagar, Puducherry – 605 006.

7. Shanthi Tamilmani,
Nursing Superintendent,
JIPMER, Dhanwantari Nagar,
Puducherry – 605 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to Order in G.O.(D) No.928, Health & Family Welfare (Z1) Department, dated 21.04.2017 issued by the second respondent and quash the same.

For Petitioner : Mr.P.V.S.Giridhar
for M/s.Giridhar and Sai
For Respondent 1 : Mr.J.Madana Gopal Rao
For Respondent 2 : Mrs.V.Annalakshmi
Government Advocate

For Respondent 3 : Mr.S.Sivakumar

For Respondent 4 : Mr.N.R.Nixon
For Respondent 5 : Mr.S.Saravanan
For Respondent 6 : Mr.M.T.Arunon
For Respondent 7 : No appearance

ORDER

This Writ Petition is filed for issuing a Writ of Certiorari to quash the Government Order in G.O.(D)No.928, Health and Family Welfare (Z1) Department, dated 21.04.2017 issued by the second respondent.

2.The brief facts that are leading to the above Writ Petition are as follows:

2.1.The petitioner was appointed as a Public Health Nurse (PHN) on 27.08.1987 in Jawaharlal Institute of Post Graduate Medical Education and Research (hereinafter referred to as 'JIPMER') (6th respondent). The petitioner holds B.Sc., (Nursing) (Hons) degree from the Delhi University and also holds an MBA in Hospital Management. The petitioner was promoted to the post of Assistant Nursing Superintendent (ANS) on 20.12.2000

and next to the post of Deputy Nursing Superintendent (DNS) on 14.08.2007 and then to the post of Nursing Superintendent (NS) on 22.07.2015. It is stated that the seventh respondent who is holding a Diploma in General Nursing and Midwifery entered service as a Staff Nurse on 12.10.1987 in JIPMER. It is stated that the seventh respondent was promoted as Nursing Sister which is equivalent to the post of Public Health Nurse (PHN) on 13.11.1990, three years after the petitioner's appointment to the same post. It is also admitted by the petitioner that seventh respondent was promoted to the post of Assistant Nursing Superintendent (ANS) on 09.02.1996 and to the post of Deputy Nursing Superintendent (DNS) on 14.08.2007. Further, the seventh respondent was promoted to the post of Nursing Superintendent (NS) on 14.12.2013.

2.2.The next avenue of promotion open to the petitioner is to the post of Chief Nursing Officer (CNO). It is stated that as per the recruitment rules, a candidate who is competing to the post of Chief Nursing Officer (CNO) must hold a Diploma in Nursing education and Administration or B.Sc., in Nursing from a

recognised university. It is the case of the petitioner that the seventh respondent does not possess the qualification. Though it is admitted that the seventh respondent holds a basic Diploma in General Nursing and she has obtained a degree through distant education programme in post basic B.Sc., (Nursing) in 1999 from Indira Gandhi National Open University (hereinafter referred to as 'IGNOU'), it is stated that post basic B.Sc., (Nursing) from open university is not a recognised qualification. The petitioner also stated that the staff nurses working in Government hospitals who underwent post basic B.Sc., (Nursing) through distance education mode in IGNOU (between 1995 and 2007) filed a Writ Petition for issuing a Writ of Mandamus to direct the Tamil Nadu Nurses and Midwives Council to register their additional qualification and that the said Writ Petition was dismissed by a Division Bench of this Court by its order dated 31.01.2012.

2.3.It is further stated that the seventh respondent was nominated as in-charge of nursing section on 30.06.2017. It is further stated by the petitioner that the sixth respondent is taking steps to permit the seventh respondent as Chief Nursing

Officer (CNO) based on the impugned Government Order. It is further stated that by the impugned Government Order, the second respondent granted permission to register the candidates who have undergone post basic B.Sc., (Nursing) through IGNOU from 1995 to 2005 in the IGNOU approved programme study centres retrospectively in the Tamil Nadu Nurses and Midwives Council as a one time measure. Since the registration of the additional qualification of post-basic B.Sc., (Nursing) obtained through IGNOU will enable the seventh respondent to qualify to the post of Chief Nursing Officer, the petitioner has filed the above Writ Petition challenging the impugned Government Order.

3.The learned counsel appearing for the petitioner submitted that the power to recognise the qualification is vested only with the Indian Nursing Council under Section 10 of the Indian Nursing Council Act, 1947 and in the Central Government which is empowered to amend the schedule of recognised qualifications under Section 15 of the Act. Hence, it is submitted that the impugned Government Order is without jurisdiction. It is further stated that the Indian Nursing Council was constituted to

establish a uniform standard of education/training for nurses, midwives and health visitors and that the said legislation falls under entry 66 of the Union List and that the State Government has no legislative competence nor executive power to confer a qualification which can be recognised only by the Indian Nursing Council in exercise of its power under the Central Act.

4.It is further submitted that by the impugned Government Order, the second respondent has granted permission to register candidates who had undergone post basic B.Sc. (Nursing) through IGNOU from 1995 to 2005 retrospectively in the Tamil Nadu Nursing and Midwives Council and that it is unconstitutional. It is also submitted that the State Government cannot recognise qualifications which are not recognised by the Indian Nursing Council.

5.It is further submitted that the facilities and infrastructure offered by the Study Centres recognised by IGNOU cannot be physically inspected or verified after 25 years and that the impugned Government Order is, therefore, whimsical and against

public interest. In other words, it is submitted that recognising a qualification which is not recognised by the Indian Nursing Council would pose a grave danger to public health.

6.The fifth respondent namely IGNOU filed a counter affidavit *inter alia* contenting that the Indian Nursing Council vide their letter dated 20.10.2016 has informed IGNOU that the Executive Council of IGNOU has agreed to register all the students who have qualified post-basic B.Sc., (Nursing) courses through IGNOU approved programme study centres prior to the year 2012 as a registrable qualification for all purposes. It was therefore further contended that the post-basic B.Sc., (Nursing) course undergone in the year 1999 with IGNOU is a registrable qualification with the Indian Nursing Council.

7.The third respondent, namely, the Indian Nursing Council has also filed a counter affidavit and stated that in terms of Section 10 of the Indian Nursing Council Act, 1947, the power to recognise nursing qualifications rests solely upon Indian Nursing Council and the State Government has no power to recognise

nursing educational qualifications. It is to be pointed out that the third respondent Indian Nursing Council has also admitted the letter dated 20.10.2016 addressed to IGNOU intimating them the decision of the Executive Council of Indian Nursing Council to register all the students who have qualified post basic B.Sc., (Nursing) course through IGNOU approved programme study centres prior to the year 2012 as as a registrable qualification for all purposes.

8.The fourth respondent, namely, the Tamil Nadu Nurses and Midwives Council has filed a counter affidavit again referring to the letter dated 20.10.2016 issued by the Indian Nursing Council to IGNOU. It is stated that the impugned Government Order is in terms of the said communication and that therefore, the impugned Government Order is not in derogation of any statutory provision as the Indian Nursing Council which is the competent authority to recognise qualifications has clarified the position. It is also stated that the Tamil Nadu Nurses and Midwives Council registered the candidates based on the Tamil Nadu Nurses and Midwives Act III of 1926. It is stated that

under Article 2 (4) under Sub Section (1) of Section 12, every registered nurse, midwife, auxiliary nurse-midwife or health visitor who applies to the Registrar for registration in respect of any additional qualification as approved by the Indian Nursing Council and included in Part II of the Schedule appended to the Indian Nursing Council Act.

9. In the counter affidavit filed by the second respondent, similar stand was taken and the letter dated 20.10.2016 addressed to IGNOU by the Indian Nursing Council is again relied upon to submit that the permission granted to register the post basic B.Sc., (Nursing) as an additional qualification retrospectively with the Tamil Nadu Nurses and Midwives Council is perfectly valid.

10. Having regard to the specific stand taken by the petitioner and the respondents, the question arises for consideration in this Writ Petition is whether the post basic B.Sc., (Nursing) course through IGNOU approved programme study centres is a recognised qualification under the Indian Nursing

Council Act and whether the impugned Government Order directing registration of the qualification of 7th respondent and other persons who underwent the post basic B.Sc., (Nursing) course in IGNOU approved programme study centres from 1995 to 2005 is valid in view of the letter dated 20.10.2016 issued by Indian Nursing Council.

11.The learned Counsel appearing for the petitioner referred to some of the provisions of the Indian Nursing Council Act and submitted that the post basic B.Sc., (Nursing) course through IGNOU is not recognised under Indian Nursing Council Act and that the post facto approval by letter dated 20.10.2016 cannot validate such qualification. Since the qualification is not recognised and cannot be recognised under Indian Nursing Council Act, the learned Counsel appearing for the petitioner further submitted that the impugned Government Order is unsustainable in law.

12.The learned Counsel appearing for the respondents however relied upon a judgment of the Delhi High Court in a

batch of Writ Petitions in the case of Jincy Joy and another v. Indira Gandhi National Open University and others in W.P.No.1644 of 2011 and batch. In the judgment of the Delhi High Court, it is seen that the people who have underwent post basic B.Sc., Nursing courses through IGNOU were granted reliefs by issuing direction in the Writ Petition filed by them to the Council to grant necessary permission/No Objection Certificate to the petitioners for admission to M.Sc., (Nursing) course after holding that the petitioners therein who underwent course in post basic B.Sc., (Nursing) through IGNOU are entitled to get their qualification registered by the Indian Nursing Council as duly recognised in terms of Section 10(2) of the Indian Nursing Council Act, 1947.

13.The learned Counsel appearing for the petitioner however, produced before this Court the judgment of the Hon'ble Supreme Court in the case of ***Annamalai University rep. by Registrar v. Secretary to Government, Information and Tourism Department and others*** reported in ***2009-3-LW 603 = (2009) 4 SCC 590***. Before the Hon'ble Supreme Court, the

regulation framed under the University Grants Commission Act, particularly, the scope of Regulation 2 relating to qualification of students to seek admission to Master's course was considered in order to test the validity of post-facto approval granted to the courses of studies which are not recognised by the University Grants Commission. The specific argument that the regulations framed by University Grants Commission in the event of having been in conflicting with the Open University Act must be held to be *ultra vires* as the same particularly in view of Section 2 of Section 5 of the Open University Act providing for non obstante clause is negatived. Despite the post facto approval recognising a degree through distance education programme it was ruled by the Hon'ble Supreme Court that the concerned university had no jurisdiction to confer a degree. In paragraph 29 of the judgment it has been held as follows:

“29.The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant - University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect. The provisions

of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act.”

14. It is pertinent to point out that the Hon'ble Supreme Court in ***Annamalai University*** case referred supra, has further held that the University Grants Commission Act enacted by the parliament comes within the purview of entry 66 of the list-I of seventh Schedule of the Constitution of India and that the IGNOU though have been enacted by the parliament in exercise of its legislative competence in terms of entry 25 is bound by the provisions of University Grants Commission Act. It was a case where a person who do not possess a basic graduation degree obtained a post graduation degree from Annamalai University through the Distance Education Programme of IGNOU. The degree was held to be invalidated in terms of University Grants Commission Act and particularly Regulation 2. The Hon'ble Supreme Court categorically held that Regulation 2 of University Grants Commission Act is not subservient to the IGNOU Act. In other words, it has been categorically held that the parliament has enacted University Grants Commission Act with regard to coordination and determination of standards in institutions for

higher education and that the University Grants Commission Act governs all universities including IGNOU also. The Hon'ble Supreme Court has also observed that the position has also been admitted by IGNOU before the Hon'ble Supreme Court.

15. Similar is the situation in the present case. The parliament enacted Indian Nursing Council Act in order to establish a uniform standard of training of nurses, midwives and health visitors. The Central Council was empowered to constitute a Council for the purpose of the Act. Sections 10, 11, 12, 14 and 15 of the Act are relevant and hence, extracted below:

“10. Recognition of qualifications (1) For the purposes of this Act, the qualifications included in Part I of the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the State which, being recognised by the Government in consultation with the State Council, if any, for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, auxiliary nursing-midwifery health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority in any territory of India to which this Act does not extend or foreign country which by the law of such territory or country is entrusted with the maintenance of a register of nurses midwives or health visitors; for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any such territory or country, or such qualification, only

when granted after a specified date, shall be a recognised qualification for the purposes of this Act:

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice⁷[of the foreign country] in which the qualification is granted persons domiciled or originating⁸[in India]³[* * *] and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession⁹[in that country] :

Provided further that--

(i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a²[State] Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and

10[(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply mutatis mutandis to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.

11. Effect of recognition [(1)] Notwithstanding anything contained in any other law,--

(a) any recognised qualification shall be a sufficient qualification for enrolment in any ² [State] register;

(b) no person shall, after the date of commencement of this Act, be entitled to be enrolled in any ² [State] register as a nurse, midwife, [auxiliary nurse-midwife], health visitor, or public health nurse unless he or she holds a recognised qualification :

Provided that any person already enrolled in any ² [State] register before the said date may continue to be so enrolled notwithstanding that he or she may not hold a recognised qualification :

Provided further that any person who was immediately before the said date entitled to be enrolled in any ² [State] register but was not so enrolled shall on application made in this behalf before the expiry of two years from the said date be entitled to be enrolled in that register;

(c) any person holding a recognised higher qualification shall be entitled to have the qualification entered as a supplementary qualification in any ² [State] register in which he or she is enrolled, and after the said date no person shall be entitled to have entered as a supplementary qualification in any ² [State] register any qualification which is not a recognised higher qualification

[(2) Notwithstanding anything contained in clause (b) of sub-section (1)--

(a) a citizen of India holding a qualification which entitles him or her to be registered with any Council of Nursing or Midwifery (by whatever name called) in any foreign country, may, with the approval of the Council, be enrolled in any State Register; and where approval has been accorded by the Council in respect of such qualification in one case, the approval of the Council for enrolment in a State register in the case of any other citizen of India holding the same qualification shall not be necessary;

(b) a person not being a citizen of India who is employed as a nurse, midwife, auxiliary nurse-midwife, teacher or administrator in any hospital or institution situated in any State for purposes of teaching, research or charitable work may, with the approval of the President of the Council, be enrolled temporarily in the State Register for such period as may be specified in this behalf in the order issued by the said President:

Provided that the practice by such person shall be limited to the hospital or institution to which he or she is attached.]

12. Power to require information as to courses of study and training and examinations - Every authority in any1[State]2[* * * *] which grants a recognised qualification, or a recognised higher qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualifications conferred, and generally as to the requisites for obtaining such qualification.

14. Withdrawal of recognition - (1) When upon report by the Executive Committee, it appears to the Council--

(a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any1[State]2[* * *], or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under the Act or fall short of the standards required thereby, or

(b) that an institution recognised by a1[State] Council for the training of nurses, midwives3[auxiliary nurse-midwives] or health visitors does not satisfy the requirements of the Council,--

the Council may send to the Government of the1[State] in which the authority or institution, as the case may be, is situated a statement to such effect and the1[State] Government shall forward it, along with such remarks as it may think fit to the authority or institution concerned and, in a case referred to in clause (b) to the1[State] Council also, with an intimation of the period within which the authority or institution may submit its explanation to the1[State]

Government.

(2) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of the period, the1[State] Government shall make its recommendations to the Council.

(3) The Council, after such further inquiry, if any, as it may think fit to make, and in a case referred to in clause (b) of sub-section (1), after considering any remarks which the1[State] Council may have addressed to it, may declare,--

(a) in a case referred to in clause (a) of that sub-section, that the qualifications granted by the authority concerned shall be recognised qualifications only when granted before a specified date, or

(b) in a case referred to in the said clause (b), that with effect from a date specified in the declaration any person holding a recognised qualification whose period of training and study preparatory to the grant to him of the qualification was passed at the institution concerned shall be entitled to be registered only in the1[State] in which the institution is situated.

(4) The Council may declare that any recognised qualification granted outside the1[States]2[* * *] shall be a recognised qualification only if granted before a specified date.

15.Mode of declarations. [(1)] All declarations under section 10 or section 14 shall be made by resolution passed at a meeting of the Council called for the purpose, and shall forthwith be published in the Official Gazette.

[(2) The Central Government shall, from time to time, by notification in the Official Gazette,3amend the Schedule so as to bring it into accord with any declaration under section 10 or section 14.]”

16.Under Section 10 of the Act, the qualifications which are included in Part 2 of the Schedule are the recognised qualifications and the qualifications included in Part 2 of Schedule are the recognised higher qualifications. Under Section 10(2) of the Act, the Council has to declare qualification to be a recognised qualifications for the purpose of the Act. Under Section 11(1)(b), no person shall after the commencement of

Indian Nursing Council Act, be entitled to be enrolled in any State register as a nurse, midwife, auxiliary nurse – midwife, health visitor or public health nurse unless he or she holds a recognised qualification. Under Section 15 of the Act, all the declarations under Section 10 and 14 of the Act shall be made by resolution passed at the meeting of the Council and such resolutions are required to be published in the official gazette. Thus, by following Section 15 of the Act qualifications which are brought to the Schedule to the Act can be amended from time to time. In this case, it is not in dispute that the diploma in post basic B.Sc., (Nursing) through IGNOU is not a recognised course so as to be included in the Schedule of the Act as a recognised institution. It is for the said purpose, a letter has been obtained from Indian Nursing Council which spells out that the Executive Council of Indian Nursing Council has agreed to register students who have qualified in post basic B.Sc., (Nursing) course through IGNOU approved programme study centres prior to the year 2012 as a registrable qualification. However, under Indian Nursing Council Act a declaration under Section 10 of the Act shall be made by a resolution passed in a meeting of the Council

called for the purpose and it shall forthwith be published in the official gazette. Hence, the power is given to the council to make the resolution as contemplated under Section 15 of the Act. The Act does not give any power to grant recognition by other means which are not provided under the Act. In those circumstances, a degree or course which is not recognised by the Indian Nursing Council cannot be approved by the Executive Committee of council without following the procedure prescribed under the Act, contrary to the provisions of the Act. In this case, the Indian Nursing Council by a letter (not by resolution of council but pursuant to the decision of Executive Committee) has granted post facto approval by granting recognition to register all students who have qualified post basic B.Sc., (Nursing) course through IGNOU approved programme study centres prior to the year 2012 with retrospective effect. It is to be seen that there is no reference to any declaration of Indian Nursing Council or its publication in the gazette. No power is conferred on Indian Nursing Council to grant post facto recognition in exercise of its power under the provisions of the Act. When the Indian Nursing Council has no power to recognise degree obtained through

IGNOU with retrospective effect, it goes without saying that the State Government cannot approve the unrecognised degree on the basis of the communication dated 20.10.2018. As it has been held by the Hon'ble Supreme Court in ***Annamalai University*** case, the State Government cannot validate the qualification of post basic B.Sc., (Nursing) course through Distance Education mode in IGNOU which is not a recognised degree under Indian Nursing Council Act. Hence, the impugned order is liable to be quashed. In that view, the petitioner is entitled to the relief. As a result, the Writ Petition is allowed and the impugned Government Order issued by the second respondent vide G.O.(D) No.928, Health and Family Welfare (Z1) Department, dated 21.04.2017, is quashed. No order as to costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

सत्यमेव जयते

03.01.2019

Internet : Yes / No
Index : Yes / No
SRM

WEB COPY

S.S.SUNDAR, J.
SRM

To

- 1.The Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
- 2.The Secretary to Government,
Ministry of Health and Family Welfare,
St. Fort George, Chennai – 600 009.
- 3.The Secretary,
Indian Nursing Council,
8th Floor, NBCC Centre,
Plot No.2, Community Center, Okhla Phase-I,
Pocket A, Okhla I, Okhla Industrial Area,
New Delhi, Delhi – 110 020.
- 4.The Secretary,
Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56,
Santhome High Road, Mylapore,
Chennai – 600 004.
- 5.The Indira Gandhi Open University (IGNOU),
IGNOU Residential Campus Road,
Maidan Garhi, New Delhi – 110 068.
- 6.The Director,Jawaharlal Institute of Post Graduate
Medical Education & Research (JIPMER),
Dhanwantari Nagar,
Puducherry – 605 006.

Pre-Delivery Order made in
W.P.No.5409 of 2018 and W.M.P.Nos.6665 and 6666 of 2018

03.01.2019