

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13482 of 2017
and
W.M.P.No.19089 of 2017

Varaaki

... Petitioner

Vs

- 1.The Indian Nursing Council,
Rep by its Chairman,
8th Floor, NBCC Center,
Plot No.2, Community Center,
Okhla Phase-1, New Delhi-30.
- 2.The Tamil Nadu Nurses & Midwives Council,
No.140, Jayaprakash Narayanan,
Santhome High Road,
Near Santhome Church,
Mayilapore, Chennai-4.
- 3.The Regional Joint Director,
Department of Employment & Training,
Commercial Tax Building,
Kajamalai, Trichy.
- 4.The Joint Director,
Department of Health Service,
Opp. To Theppakulam,
Thiruvavur.
- 5.The Joint Director,
Department of Health Service,
Nagapattinam.
- 6.The Joint Director,
Department of Health Service,
Thanjavur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the respondents and in particularly

respondents No.1 to 3 to conduct proper investigation and to take appropriate legal steps against the fake Nursing and Catering Institutions which have obtained permission from the BSS (Bharathiya Sevaj Samaj) & NCVRT (National Council for Vocational Research and Training).

For Petitioner : No Appearance

For R1 : Mr.A.R.Nixon

For R2 : Mr.V.Prakash, Senior Counsel,
for Mr.R.Thomas.

For R3 to R6 : Mr.E.Manoharan
Additional Government Pleader.

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a writ of mandamus, to direct the respondents 1 to 3, to conduct proper investigation and to take appropriate legal steps against the fake Nursing and Catering Institutions which have obtained permission from BSS (Bharathiya Sevaj Samaj) and NCVRT (National Council for Vocational Research and Training).

2. On 09.08.2019, there was no appearance for the petitioner. Therefore, we directed the Registry to post the matter on 13.08.2019, under the caption "for dismissal". Thus, it is listed today.

3. Inviting the attention of this Court to the prayer sought for in W.M.P.No.19089 of 2017 in W.P.No.13432 of 2017, filed by the NCVRT Vocational Education Council, represented by its Southern Regional Coordinator Mr.Madhaiyan Gurunathan, New Delhi, proposed to implead itself as respondent No.7, Mr.V.Prakash, learned Senior Counsel appearing on behalf of Tamil Nadu Nurses and Midwives Council, Chennai/the 2nd respondent, submitted that there are several institutions running without proper permission obtained from the Competent Authority and that the Joint Director, Department of Health Service, Thiruvavur/the 4th respondent, has no power to take action. However, when attention of the learned Senior Counsel, was invited to Sections 10, 11, 13 and 14 of the Indian Nursing Council Act, 1947, dealing with Recognition of Qualifications; Effect of Recognition; Inspections and Withdrawal of Recognition, are brought to the notice of the learned Senior Counsel, submission was that even if action is taken, notices sent would not be responded. We are not in agreement with the said submission.

4. At this juncture, Sections 10, 11, 13 and 14 of the Indian Nursing Council Act, 1947, are extracted hereunder:-

"10. Recognition of qualifications.-(1) For the purposes of this Act, the qualifications included in 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 [States] which, being recognised by the [State] 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 practice [of the foreign country] in which the qualification is granted persons domiciled or originating [in India] and holding qualifications recognised under this Act are permitted to enter and practice the nursing profession [in that country]:

Provided further that-

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

[(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 [State] register;

(b) no person shall, after the date of commencement of this 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:

Provided that any person already enrolled in any [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 [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 [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 [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.

13. Inspections.- (1) The Executive Committee may appoint such number of inspectors [whether from among members of the Council or otherwise] as it deems necessary to inspect any institution recognised as a training institution, and to attend examinations held for the purpose of granting any recognised qualification or recognised higher qualification.

(2) Inspectors appointed under this section shall report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein, or as the case may be on the sufficiency of the examinations.

(3) The Executive Committee shall forward a copy of such report to the authority or institution concerned, and shall also forward copies, with the remarks, if any, of the authority or institution concerned thereon, to the Central Government and to the [State] Government and [State] Council of the 1 [State] in which the authority of institution is situated.

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 any [State] 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 a [State] Council for the training of nurses, midwives [auxiliary nurse-midwives] or health visitors does not satisfy the requirements of the Council, - the Council may send to the Government of the [State] in which the authority or institution, as the case may be, is situated a statement to such effect and the [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 the [State] Council also, with an intimation of the period within which the authority or institution may submit its explanation to the [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, the [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 the [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 the [State] in which the institution is situated.

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

5. Mr.V.Prakash, learned Senior Counsel for Tamil Nadu Nurses and Midwives Council, Chennai/the 2nd respondent, submitted that inasmuch as writ petition has been preferred as a public interest writ petition, 2nd respondent seeks to assist the Court. On more than one occasion, writ petitioner was absent. Hence, writ petition is dismissed for non-prosecution. No Costs. Consequently, writ miscellaneous petition, is also dismissed.

dm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman,
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Nagapattinam.
- 6.The Joint Director,
Department of Health Service,
Thanjavur.

+1cc to Mr.R.Thomas, Advocate, SR.No.68791
+1cc to Mr.A.R.Nixon, Advocate, SR.No.69229

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W.P.No.13482 of 2017
and
W.M.P.No.19089 of 2017

Kak (18/09/2019)

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