

***THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

**+ WRIT PETITION Nos.20430, 20462, 20482, 20509, 20539,
20545, 20559, 20563, 20594, 20635, 20662, 20668 and
20709 of 2019**

% 13-11-2019

WP No.20430 of 2019:

Bijili School of Nursing, rep.by its Correspodnent,
B. Ravinder Reddy, s/o. Mohan Reddy,
R/o. Vanasthalipuram, Ranga Reddy District.

... Petitioner

v.

\$The State of Telangana, rep.by its Principal Secretary,
Health, Medical & Family Welfare (KI) Department,
Secretariat, Hyderabad,
and 2 others.

... Respondents

! Counsel for the petitioners: Sri K. Anantha Rao

Counsel for the Respondents: Sri Nagesh Bheemapaka
Govt. Pleader for Medical and
Health & Family Welfare

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? Cases referred:

1. (1994) 5 SCC 267
2. AIR 1978 SC 597
3. AIR 1981 SC 818
4. (1998) 8 SCC 1

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**WRIT PETITION Nos.20430, 20462, 20482, 20509, 20539,
20545, 20559, 20563, 20594, 20635, 20662, 20668 and
20709 of 2019**

COMMON ORDER:

Since the cause in all these writ petitions is common, they are being disposed of by this common order.

2. In this batch of writ petitions, the action of the respondent authorities in excluding the names of the petitioner nursing schools from the list of eligible schools for admitting students into General Nursing and Midwifery (for short 'GNM') training course for the year 2019-20 through web counseling, is under challenge.

3. The common case of the petitioners is that the names of petitioner nursing schools were originally included in the list that was released in pursuance of notification for admission into first year GNM training course issued on 22.07.2019. It is stated that the said notification has been withdrawn after the two days of issuance. However, upon the reissue of notification in Rc.No.30082/N1/2019, dated 11.09.2019, the petitioner nursing school names have been excluded for the year 2019-20, into which students can seek admission into the first year of three year GNM training course. It is stated that no proceedings have been issued by the respondent authorities between July 2019 and September 2019 either putting them on notice or giving any justification for omission

of names from the list of schools which are permitted for intake of students.

4. The learned counsels representing the parties would submit that for the purpose of adjudication of this dispute, the facts as stated in Writ Petition No.20430 of 2019 be taken as basis. Counter affidavits on behalf of respondents and reply thereto in all the matters have been filed.

5. Heard Sri K. Anantha Rao, learned counsel appearing on behalf of all the writ petitioner schools and Sri Nagesh Bheemapaka, Government Pleader for Medical and Health & Family Welfare appearing for the respondents.

6. The learned counsel for the petitioner schools submits that the petitioners have been granted affiliation to run nursing schools both by the State authorities and also the Indian Nursing Council (INC) with permitted intake of students, as mentioned in the Government Order (GO) according approval. Based on such GO issued, the schools have been set up and have been running and in some cases for the last more than 10 years with regular intake of students year after year including the last academic year of 2018-19 for imparting GNM training Course.

7. It is also stated that though the schools were initially permitted to be set up at a particular location, due to various reasons like i) providing better infrastructure facilities;

ii) premises where initial permission granted being a let out premises the schools have decided to move to their newly constructed own premises; iii) some of the premises which were on lease, were forced to evict due to the default of owners in payment of monies taken as loans from the banks whereunder this property is given as a collateral security; and iv) similar such other reasons. The learned counsel would submit that the change of location in case of some of the petitioners was communicated to the 2nd respondent and the schools have also been inspected at the new location by the Inspection Committee constituted by the 2nd respondent.

8. In order to appreciate the contention of petitioner schools, it is to be seen that while granting permission, the respondent State Government authorities have issued separate GOs in respect of each of the institutions specifying the terms and conditions which would govern the establishment and running of the schools. Except in one of the permission granted to one of the petitioner schools, wherein a specific condition to the effect that the school should not shift from the location for which the permission is granted without prior approval of the authority, similar such clause does not find mention in the GOs by which permission has been granted to the other petitioner schools.

9. The GOs under which permission has been accorded to each of these schools, however, indicate that they shall abide

by the terms and conditions prescribed in the Rules stipulated by the Government from time to time.

10. The main ground of challenge in these writ petitions is that the action of the respondent authorities in excluding the names of the petitioner schools is without issuing any notice whereby the petitioners were put on notice of the action contemplated for any contravention of Rules and Conditions stipulated or there being any order or proceeding passed thereon. Thus, the impugned action is alleged to be in violation of principles of natural justice and is called in question in these writ petitions.

11. The learned Government Pleader opposing the writ petitions placed his defence for violation of conditions on the following counts:

- i) By relying on Memo, dated 21.12.2002.
- ii) Indian Nursing Council Resolution dated 29.10.2014.
- iii) Alternative remedy of appeal to Government.
- iv) The petitioner schools were not having affiliations in the previous years itself.

Supporting the action of 2nd respondent in excluding the petitioner schools from the list notified, the learned Government Pleader, by referring to para-6 of the counter affidavit filed by 2nd respondent, would submit that as stated in the Memo No.20717/K2/2001-1, dated 21.12.2002, the schools are not permitted to shift from the location for which permission was accorded, to another location without prior

approval of the Government and thus, the petitioner schools have violated the conditions stipulated by the Government through memo dated 21.12.2002 and made themselves liable for consequences of violation of the conditions, thus their affiliation is liable to be cancelled disentitling them from being included in the list of approved schools for passed the web options.

12. The learned Government Pleader would further submit that INC, New Delhi by resolution dated 29.10.2014 has notified that change of location of institution shall be considered under proposal, and thus, the petitioners who have relocated their institution/schools from the originally permitted location would have to obtain approval from INC, based on the guidelines as applicable at the time of seeking such approval. Inasmuch as no such approval has been accorded by INC, New Delhi, the petitioners are not entitled to have the name of the schools included in the eligible list of schools for the academic year 2019-20.

13. To appreciate the contention urged by the learned Government Pleader with regard to the condition of prior approval of Government being necessary for shifting from one location to another as per Memo dated 21.12.2002, a perusal of the said memo would indicate that the condition of prior approval of the government being necessary is specified in Annexure-II thereto. The said Annexure-II forms part and

parcel of the memo dated 21.12.2002 which is issued, accepting the recommendations of the Chairman Selection Committee, Paramedical Institutions, Hyderabad in respect of schools which are shown in Annexure-I to the said memo. This fact would be evident from a reading of para-3 of the said memo. Further, the Annexure-I, as referred to in para-3 of the said memo, is in relation to recommendation in respect of five schools as mentioned therein to which the said condition as specified in Annexure-II would be applicable. Thus, the claim made in the counter affidavit by the 2nd respondent by referring to the memo dated 21.12.2002 as being applicable to petitioner schools is totally misplaced and is liable to be rejected.

14. The further submission of the learned Government Pleader is that reference in the said para of the counter affidavit to resolution dated 29.10.2014 passed by INC in relation to change of location, is also not acceptable for the reason that some of the petitioner schools have been established prior to passing of the resolution by INC and even if there is any violation of such resolution, it is for the respective authorities to take note of and act in accordance with the conditions governing under which the schools were recognized. Further, no material is placed before this Court or it has been urged that the action by the 2nd respondent authority is in pursuance of or on the recommendation of INC.

15. As seen from the GOs by which each one of the petitioner schools have been granted permission clearly stipulates, the method to deal with contravention of the conditions stipulated by Council, States, Central Government. The said condition stipulated in G.O. whereby petitioner schools came to be permitted to be established, reads as under:

“5. The permission granted in para (2) above is liable for cancellation whenever the Government/Indian Nursing Council, New Delhi, Andhra Pradesh Nursing and Midwives Council, Hyderabad/Director of Medical Education forms the opinion based on an inspection report that the afore mentioned Educational Society is not running the School in the best interests of the students or commits any irregularity or violates any of rule or regulation, after giving 15 days notice to the Educational Society to show cause, against the proposed cancellation and pass appropriate orders after considering the explanation, if any, offered by the Society against the show cause notice.”

16. In all the cases of the writ petitioner schools, it is stated that though no specific notices in terms of the condition in the G.O. has been issued indicating the contravention and the proposed action to be taken, general notices were issued to them for some schools in the year 2017 and for some in the year 2018 whereby it was stated that the petitioner schools were not functioning at the places it was originally permitted and explanation was sought. The said notice issued did not mention that the said shifting from one place to another is in contravention of any of the specified terms and conditions, making the recognition granted liable for cancellation.

In response to the said notice, all the petitioners have filed their replies offering their explanation for such shifting from the permitted place to a new place. Upon the receipt of the said reply, the respondent authorities did not choose to take any further action and maintained static silence for nearly more than six months nor the said respondent authority issued any proceeding cancelling the affiliation granted to the petitioner schools, which would give them a right to question the said action of the respondents.

17. On the other hand, the respondent authorities excluded the names of the petitioner schools from the list of approved schools for web options without there being any change in situation from July to September without assigning any reason or issuing any proceedings in relation thereto. Even the counter affidavit filed does not disclose any valid reason for such omission.

18. Further, even assuming that the notice which is merely general in nature is taken to be a notice issued as provided or contemplated under the clause specified in the GO, the non-consideration of their reply/ response submitted by each of the respondents, before the names of the petitioner schools are deleted from the list of approved schools would tantamount to the impugned action of the respondent authorities being in violation of principles of natural justice.

19. The learned Government Pleader for Medical and Health would fairly submit that there is no specific communication that has been issued to each of the schools notifying them of the reason for being non-consideration of the said schools in the name of the list of schools as notified in September 2019. However, he sought to justify that no such communication is required to be specifically issued as the petitioners were very much put on notice regarding the contravention, which has been clearly admitted by them in the explanation given and thus, the same would not amount to violation of principles of natural justice as the authorities have afforded due opportunity to the petitioners.

20. The said submission of the learned Government Pleader is considered, only for being rejected in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of **Dr. Rash Lal Yadav v. State of Bihar**¹ wherein the Hon'ble Supreme Court while dealing with the provisions of Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Act, 1981 was pleased to hold that

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“...unless the law expressly or by necessary implication excludes the application of the rule of natural justice, Courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences.”

¹ (1994) 5 SCC 267

The Hon'ble Supreme Court in the said judgment further held that --

"Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case (emphasis supplied)."

21. One another aspect of principles of natural justice is also giving an opportunity of hearing to the person who is stated or whose actions are stated to be in contravention before action proposed against such person is taken. In this regard, reference may be made to judgment of the Hon'ble Supreme Court in the case of **Maneka Gandhi v. Union of India**² wherein it was held that --

"..... although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature".

..... Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action.

² AIR 1978 SC 597

..... The inquiry must, therefore, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?

..... The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.”

22. In **Swadeshi Cotton Mills v. Union of India**³, the Hon’ble Supreme Court while dealing with Section 18-AA Industries (Development and Regulation) Act, 1951 and while considering exclusion of hearing by implication having regard to expression “immediate action” was pleased to observe as under:

“In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

23. In the present case, as stated herein above, no specific notices have been issued putting the petitioners on notice about the alleged contravention or making them liable for consequences of the recognition being cancelled or any personal hearing having been afforded. Needless to mention any order or proceeding not having been passed/issued informing the petitioner schools of the decision or reason for

³ AIR 1981 SC 818

exclusion. Thus, the impugned action of the respondent authorities in excluding the names of petitioner schools, is clearly hit by violation of principles of natural justice.

24. The further submission of the Government Pleader for Medical and Health is that as against the action of the respondent authorities, the petitioners have a remedy of appeal to the Government and the petitioner schools approached this Court directly by way of filing writ petitions without exhausting such appeal remedy, the writ petitions are not liable to be maintained. The above said submission of the learned Government Pleader is also liable to be rejected for the simple reason, as stated herein above, that after the submission of explanation of the petitioners to the notice issued by the respondent authorities, the respondent authorities choose to remain silent and no proceeding or order accepting or rejecting such explanation offered has been issued, which would confer a right on the petitioners to avail remedy of appeal provided under the statute. In the absence of issuance of any order or proceeding, the petitioner schools cannot approach the Government by filing an appeal, as no such appeal would be entertained/maintainable in the absence of any order being passed, which can be appealed against.

25. Further, refusing to exercise discretion conferred under Article 226 of the Constitution of India where a statute

provides for effective and efficacious remedy of appeal is a self imposed restriction by the Courts, which however would not apply at least in three contingencies i) where writ petitioner seeks enforcement of fundamental rights; ii) where the order or proceedings impugned or action of the authorities is in violation of principles of natural justice; and iii) where the order or the proceeding are wholly without jurisdiction or the vires of an Act is challenged, as laid down in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others***⁴. In the present batch of cases, as no order has been passed by the respondents which the petitioners could impugn by filing appeal before the Government, the exclusion of the petitioners from the list of notified schools permitted to admit students during the academic year 2019-20 being in violation of principles of natural justice, as detailed herein above, the petitioner schools are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and thus, the submission of the learned Government Pleader on the availability of alternative remedy of appeal is liable to be rejected.

26. The last submission of respondents opposing the writ petitions is by placing reliance on the counter affidavit filed through the 2nd respondent wherein it is stated that the petitioner schools have not been permitted intake of students

⁴ (1998) 8 SCC 1

in the previous years itself as their affiliation is not renewed. The learned counsel appearing for the petitioners refuted the said submission of Government Pleader and states that the petitioner schools till the academic year 2018-19 have admitted students and to that effect denying the assertion on behalf of the respondents, the petitioner schools have filed proof along with their reply affidavit showing that each of the schools have taken students who have been permitted to take examinations by the respondent authorities, which itself shows the continuation of recognition of the petitioner schools till the sudden action on the part of the respondent authorities in excluding the names of the petitioner schools is resorted to.

27. Having regard to the material placed on record, it is seen that the petitioner schools continued to function from the new premises to which they have shifted which is being shown as a cause or reason by the respondent authorities for their names being removed from the list of approved schools having contravened to the terms and conditions of the approval granted, the intake of the students is permitted by the respondent authorities till the previous academic year and therefore, it is not open to the respondent authorities to plead to the contrary. The counter affidavit filed before this Court by the 2nd respondent in Writ Petition No.20430 of 2019 wherein it is stated the petitioner schools after being granted

permission, vide G.O.Ms.No.248, dated 24.09.2012, subsequently not renewed from 27.09.2012, i.e., 3 days after being granted permission itself goes to show the casual approach and the mechanical manner in which counter affidavit is filed by the respondent authorities by affirming to the contents.

28. Considered from any angle, the action of the respondent authorities in excluding the names of petitioner schools from the list of notified schools permitted for intake of students into General Nursing and Midwifery Training Course for the academic year 2019-20, does not instill confidence in this Court to uphold/sustain their exclusion and call for interference by this Court by exercising powers conferred under Article 226 of the Constitution of India.

29. Thus, having regard to the facts and circumstances of the case, the action of the respondent authorities in excluding the names of the petitioners from the list of approved schools is held to be not in accordance with the Government Orders issued and is in violation of principles of natural justice.

30. Accordingly, the respondent authorities are directed to include the names of the petitioner schools in the second or subsequent round of web counseling if not completed already for Convener and Management Quota. In the event if web counseling is already completed, the petitioner schools shall

be permitted to admit students through spot admission under the supervision of the concerned authority.

31. However, by virtue of this order, the respondent authorities are not precluded from initiating appropriate action, if any of the school has violated any of the terms and conditions of Government Orders/permission/recognition granted in establishing the same. It is needless to mention that such action can only be taken by adhering to due process of law and after putting the petitioners on notice and also after affording personal hearing.

32. With the above observations and directions, these writ petitions are disposed of. However, there shall be no order as to costs.

33. As a sequel thereto, miscellaneous applications, if any, pending in these writ petitions shall stand closed.

T. VINOD KUMAR, J

Date: 13.11.2019

Note: 1. L.R. Copy marked.

2. CC in two days.

(B/o.)

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