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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 614 of 2019**

*(Arising out of order dated 11.12.2019 passed in Writ Petition (C) No.4535 of 2019
passed by the learned Single Judge)*

C. G. Institute of Nursing, Bilaspur Through Its Principal Mrs. Namrata Nikhil Isaac Aged About 36 Years, D/o Shri S. Masih Near Uslapur Bridge, Village Sakti Mungeli Road, Bilaspur District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Its Secretary Department of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur, Raipur Chhattisgarh. 492002.
2. Chhattisgarh Nursing Council Through Its Registrar Old Nurses Hostel, Department of Health Services, Mantralaya Parisar, Raipur Chhattisgarh 492001.
3. Pt. Deendayal Upadhyay Memorial Health Sciences And Ayush University of Chhattisgarh Through Its Registrar Sector 40, Uparwara, New Raipur Chhattisgarh. 492661.
4. Indian Nursing Council Through Its Secretary 8th Floor, NBCC Centre, Plot No. 2, Community Centre, Okhla Phase-I, New Delhi- 110020.

---- Respondents

For Appellant	: Ms. Ruchi Nagar, Advocate.
For Respondent/State	: Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent No.3	: Shri Ajay Dwivedi, Advocate.
For Respondent No.4/INC	: Shri N.K. Vyas, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****13.02.2020**

1. This appeal is against the order dated 11.12.2019 passed by the learned Single Judge in Writ Petition (C) No.4535 of 2019 whereby the interim relief sought for by the Appellant stands declined.

2. The writ petition was filed with the following prayers :

I. That the Hon'ble Court may kindly be pleased to quash the impugned recommendation order dated 06.04.2019 (Annexure P/1) passed by the respondent, Secretary Indian Nursing Council, New Delhi.

II. That the Hon'ble Court may kindly be pleased to quash the impugned order No. F.No. 18-38/7230-INC dated 13.09.2019 (Annexure P/2) issued by the respondent, Secretary, Indian Nursing Council, New Delhi.

III. That the Hon'ble Court may kindly be pleased to quash the impugned order vide No./ Regi. Nursingka./2019/1666 Raipur dated 07.11.2019 (Annexure P/3) issued by the respondent, Registrar, Chhattisgarh Nursing Council, Raipur.

IV. That the Hon'ble Court may kindly be pleased to quash the impugned order vide No./F-134/6176/D.U.H.S./Aka/2019 Raipur dated 13.11.2019 (Annexure P/4) issued by the respondent Registrar.

V. That the Hon'ble Court may kindly be pleased to direct the respondent to continue the petitioner institute to intake 40 seats/students for academic session 2019-2020 for its B.S.C (Nursing) Course.

VI. Any other interim relief deemed fit and just by this Hon'ble Court may also be granted in the interest of justice."

3. The interim order is to the following effect :

"Ms. Ruchi Nagar, counsel for the petitioner.

Mr. Ayaz Naved, GA for the State.

Mr. Ajay Dwivedi, Counsel for respondent No.3.

Mr. Shiv Sahu, on behalf of Mr. N. K. Vyas, Counsel for the respondent No.4.

Since all the respondents are represented through their respective counsel, issuance of notice stands dispensed with.

Let reply be filed within a period of four weeks and matter be listed for further hearing immediately after reply of the respondents are filed.

Heard on I.A. No.1, which is an application for grant of interim relief.

The primary grievance of the petitioner is the action on the part of the respondent No.4 whereby the intake capacity of the Bsc. Nursing Course undertaken by the petitioner establishment has been reduced from 40 to 30. Contention of the petitioner is that the action on the part of the respondent No.4 is without jurisdiction and authority as it is not within the powers of respondent No.4 to decide the intake capacity of an establishment.

Further contention of the petitioner is that subsequent

to the respondent No.4 highlighting the shortcomings on inspection that they had conducted the petitioners have rectified all the defects and all the improvements made upon in respect of the infrastructure available at the petitioner establishment was intimated to the respondents, yet respondents have not taken care of scrutinizing the scheme and immediately reduced the intake capacity.

This Court considering the entire fact that Indian Nursing Council on inspection found lots of deficiency, particularly, infrastructure and teaching faculties in the said establishment. What has also to be seen is that the recognition for the petitioner establishment was given with an intake capacity of 40 seats, however subsequently, considering the infrastructure, facilities, etc. they were granted permission only for 30 seats for the B.Sc. Nursing course. The provision of Section 13 of the The Indian Nursing Council Act, 1947 empowers to council to conduct inspections at the college under it and submit the report to the State Government as well as to the Central Government as the case may be for appropriate action. In the instant case the action seems to have been done on the basis of inspection conducted and the appreciation of the facilities available.

Given the fact, this Court does not find any strong case made out for grant of interim relief at this juncture.

I.A. No.1 accordingly stands rejected.

List this case after reply of the respondents are received.”

4. As per the order under challenge, the learned Single Judge, taking note of the facts and figures held that no strong case was made out for grant of interim relief at the juncture and accordingly, it was rejected ordering the case to be listed after filing of reply of the Respondents.
5. At the outset, it is to be noted that no appeal is maintainable against an interim order by virtue of the proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. But then, there is a contention for the Appellant that the interim order is virtually having the effect of final order, as far as the admission to the current year is concerned. It was in the said circumstance that, we passed an order on 07.01.2020 in the following terms :

“Ms. Ruchi Nagar, Advocate for the appellant.
 Mr. N.K. Vyas, Advocate for respondent No. 4.
 Mr. Ajay Dwivedi, Advocate for respondent No. 3.
 Mr. Vikram Sharma, Deputy Government Advocate for the State.

As per Annexure P-1 letter dated 06-04-2019, pointing out the lapses/deficiencies on the part of the petitioner in respect of the Nursing Institute, it was also pointed out that there would be a re-inspection to find out whether the upgraded facilities as indicated therein have been made available for being suitable for B.Sc., Nursing course with intake capacity of 40 seats.

The case of the petitioner is that, all the deficiencies have been rectified and compliance has been reported. The report submitted was referred to in the subsequent proceeding (Annexure P-2 dated 13-09-2019) of the 4th respondent, paragraph-4 of which reads as follows:

“4. The institute filed its compliance and was placed before the Executive Committee. After due deliberations the Executive Committee reiterated its earlier decision that the institute is suitable to conduct GNM and B.Sc(N) course with 30 seats only.”

It does not show whether any re-inspection was conducted as assured in Annexure P-1 before taking a decision by the Executive Committee of Indian Nursing Council, referring to the materials as placed before them.

The learned standing counsel for the 4th respondent-Indian Nursing Council seeks for time to get specific instructions in this regard.

Post after a week.”

6. No return has been filed so far from the part of the Respondents. Today, when the matter is taken up for consideration, the learned counsel for the Indian Nursing Council submits that no inspection was conducted after 23/24.01.2019 as mentioned in Annexure P/1 and Annexure P/2; though it was stated in Annexure P/1 that after submitting the compliance report, a re-inspection would be conducted to consider whether the number of seats could be enhanced from 30 to 40 in view of the fact that the State had assessed the capacity to have a total number of 40 seats, as noted therein. But this can only be for assessing the capacity in respect of the next academic year. The learned counsel for the Indian Nursing Council also

makes a reference to Annexure P/9 dated 24.09.2019 issued by the Authorities of the State to the effect that the Appellant-Institution does not have the credentials as contended to have 40 seats.

7. The factual position is sought to be rebutted by the learned counsel for the Appellant pointing out that, all the requirements is in conformity with the instructions given by the Respondents-Authorities have been satisfied. It is simultaneously added that the Indian Nursing Council does not have the authority, as per the mandate of the various provisions of the Indian Nursing Council Act, 1947 to determine the number of seats, which power is only vested with the State. This Court does not find it necessary to go into this aspect; particularly since the prayer sought for in the writ petition is in respect of the academic year '2019-20'. We are in mid February 2020 and the academic session 2019-20 is to come to an end within a couple of months and as such, no relief can be extended to the Appellant in respect of the academic year 2019-20.
8. The learned counsel for the Appellant points out that the credentials of the Appellant might be caused to assessed by conducting a re-inspection. The learned counsel appearing for the Indian Nursing Council as well as the learned counsel representing the State submit that if the Appellant-Institution satisfies the requirements and reports compliance, appropriate steps could be caused to be pursued also by conducting inspection by the Competent Authority so as to make an assessment for the next academic year 2020-21.
9. The learned counsel for the Appellant submits that, the Appellant-Institution might be permitted to file an interlocutory application before the Single Bench, in the writ petition, with regard to the position as on date and to

cause inspection by the Competent Authority and to proceed with further steps and that the appeal could be closed accordingly.

10. In the said circumstance, we set the Appellant-Institution at liberty to file appropriate proceedings in the writ petition which is pending, in relation to the number of seats for the academic year 2020-21 to be considered by the Competent Authorities/Respondents, subject to orders to be passed by the learned Single Judge in the said matter. It is open to take steps for amendment of the main relief sought for, to appropriate extent, if so advised. The writ appeal stands closed, as no adjudication is necessary on the question projected before this Court.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE