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WPA 4069 of 2021

(Via video conference)

Soumen Dey

Vs.

State of West Bengal and others

Mr. Indranil Nandi,
Mr. Manoranjan Maiti,
Mr. Sayak Konar

... for the petitioner

Mr. Swapan Kr. Datta,
Mr. Tapas Kr. Mandal

.... for the State

Mr. Nilotpall Chatterjee

.... for the Indian Nursing Council

Learned counsel for the petitioner argues that, despite having passed out from a recognized Nursing University in Karnataka and having obtained registration under the Karnataka Nursing Council, the respondent-authorities are refusing to grant reciprocal registration to the petitioner.

Learned counsel submits that, although Clause 7 of the Examination Regulations issued by the Indian Nursing Council stipulate that the minimum pass marks

shall be 50 per cent in each of the theory and practical papers separately, several communications were made by the Indian Nursing Council to the West Bengal Nursing Council requesting the latter to consider sympathetically the applications for reciprocal registration from applicants who had secured less than the said pass marks independently in the theory and practical papers.

Learned counsel submits that although the Regulations have not yet been changed, the said communications of the Indian Nursing Council ought to have a binding effect on the West Bengal Nursing Council as well.

Learned counsel for the Indian Nursing Council (INC for short) submits that the West Bengal Nursing Council ought to have followed the communications made by the Indian Nursing Council and at least to have considered sympathetically the application of the petitioner, instead of refusing to accept the same at the outset, although the requests were general in nature and not specific directions. However, it is candidly submitted that the Guidelines still remain the same in force insofar as the minimum pass marks in each of the theory and practical papers are concerned.

Learned counsel for respondent nos.2 and 3 argues that the communications relied on by the petitioner are themselves contrary to the Guidelines of the INC itself. It

is argued that the West Bengal Nursing Council has only been following the Guidelines of the INC and cannot be faulted for doing so. Learned counsel for the respondent nos.2 and 3 further places reliance on the communications by the INC, particularly the one dated April 2, 2019 annexed at page 20 of the affidavit-in-opposition, wherein the INC itself admitted that the University from where the applicants had passed out are not following the guidelines laid down by the INC. It was further stated in the letter that the Council either have issued or will be issuing letters to the concerned Universities for the future compliance of its Guidelines in order to have uniformity across the country.

It is thus submitted that the INC itself abides by and stands by its own Rules by indicating in its communications that appropriate instructions would be issued to the Universities-in-question which are not complying with their guidelines. As such, it is submitted that there is no illegality on the part of the West Bengal Nursing Council in refusing to accept the application of the petitioner.

While making his submissions, learned counsel for the petitioner relies on a Division Bench judgment of this court, reported at *2018(1) CHN (Cal) 345 [Sonali Nandi vs. West Bengal Nursing Council]* for the proposition that, if a candidate passed out the B.Sc Nursing Course from a

recognized university, the non-compliance of certain technical qualifications required for stages prior to such passing out could not be relevant for considering registration. It is seen from the said judgment, that the facts thereof were somewhat different from the present case. In the said report, the Division Bench clearly stated that a qualification which had to be looked into prior to admitting the student in the nursing courses itself, could not be relevant after she/he passed out, at the stage of registration.

However, the distinction lies in the fact that, in the present case, the West Bengal Nursing Council is seeking to rely on the minimum criteria for registration itself and not pre-admission criteria, for refusing to accept the application.

Considering the submissions of learned counsel and the materials on record, Clause 7 of the Examination Regulations issued by the Nursing Council clearly stipulates that minimum pass marks shall be 50 per cent in each of the theory and practical papers separately.

However, there appears to be some anomaly inasmuch as in the immediately preceding Clause (no. 6), the minimum pass marks were stipulated as 40 per cent for the subject English only.

A combined reading of all the Clauses of the Examination Regulations may leave scope for a liberal

interpretation of Clause 7, since the petitioner has crossed all the other hurdles for qualifying to be registered as a nurse.

That apart, although the Indian Nursing Council reiterated time and again that they will be or have issued appropriate instructions to the Universities not following the Guidelines to bring uniformity, the Indian Nursing Council itself, in the said communications, specifically requested the West Bengal Nursing Council to take such technical hurdles as an exception to the Guidelines set by the Indian Nursing Council.

Insofar as the argument that such requests are contrary to the Guidelines of the Indian Nursing Council itself is concerned, I am of the opinion that the communications reveal the own interpretation of the Indian Nursing Council regarding the guidelines issued by itself. As such, there is no reason why the said “exception” cannot tantamount to a temporary relaxation of Clause 7 of the guidelines and/or other Clauses, if the candidates qualify on all the other yardsticks.

That apart, it is cruel to refuse reciprocal registration, thereby questioning the qualifications of an already registered nurse in a different State. It is somewhat doubtful as to whether reciprocal registration could be refused, after such registration was granted by the Karnataka University in the present case, and in the

light of the specific relaxation carved out by the Indian Nursing Council in its repeated communications. Since the fate of the nursing candidates is in question, even keeping in mind that merits ought not to be compromised, it *ex facie* appears that the present petitioner qualified on all other scores than securing 50 per cent in each of the theory and practical papers separately. As such, it was improper and inappropriate for the West Bengal Nursing Council to flout the directions of relaxation of standards issued by the parent concern, that is, the Indian Nursing Council in not even considering the request of the petitioner.

As such, WPA 4069 of 2021 is disposed of by directing respondent nos.2 and 3 to reconsider the application for reciprocal registration made by the petitioner sympathetically on merits, upon giving an opportunity to the petitioner to produce other relevant documents, if any, to substantiate his claim. Such reconsideration shall be completed by the West Bengal Nursing Council, upon giving appropriate prior notice of hearing to the petitioner sufficiently in advance, positively within May 15, 2021.

The impugned refusal of the respondent nos.2 and 3 to accept the application for reciprocal registration of the petitioner at the outset is hereby set aside. The respondent nos.2 and 3 shall now reconsider the said

application on merits in the light of the observations made above.

It is made clear that this order will not be treated as a precedent and is passed in respect of the present petitioner alone.

There will be no order as to costs.

The parties shall act on the communication by learned counsel for the parties and/or the server copy of this order, without insisting upon prior production of a certified copy.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)