

24th December, 2021
(D/L No.23)
(SKB)

WPA 21145 of 2021
(Via Video Conference)

Swatirtha Foundation
Vs.
The State of West Bengal and others

Mr. Probal Kumar Mukherjee,
Ms. Shebatee Datta
... for the petitioner.

Mr. Swapan Kumar Dutta,
Mr. Rajat Dutta
... for the State.

Mr. Nilotpal Chatterjee
... for Indian Nursing Council.

Affidavit of service filed in Court today is taken on record.

The petitioner is a Trust registered under the Indian Trust Act, 1882 and presently has a College and School for teaching B.Sc. Nursing courses from the academic session of 2021-2022. The petitioner has challenged an Order dated 30th November, 2021 of the Director of Health Services by which the petitioner was excluded from the extended MOP-up counselling in the present academic session. The reason given for excluding the petitioner is the lack of INC affiliation; INC stands for Indian Nursing Council.

According to learned counsel appearing for the petitioner, the Indian Nursing Council Act, 1947 does not provide for or contemplate any affiliation with the

Indian Nursing Council. It is also submitted that the petitioner has the requisite qualifications under the Indian Nursing Council Notification dated 5th July, 2021 and the guidelines framed thereunder for being recognized by the State Nurses and Midwives Registration Council(SNRC).

Learned counsel for the State submits that the petitioner has been given all the requisite permissions under the relevant Notification to continue as a Nursing Training College but that the permission of INC is necessary for the petitioner to be recognized under the relevant Notification.

I have heard learned counsel. First and foremost, it should be mentioned that the impugned order of the Director of Health Services is a general Order passed in relation to all Nursing Schools and Colleges in the State which has a bearing on the petitioner and has prejudicially affected the petitioner. It is evident from the impugned order itself that the only ground for not including certain Nursing Schools and Colleges in the extended MOP-up counselling is the Colleges not receiving “INC affiliation”. This requirement is not reflected from the Indian Nursing Council Act, 1947, at least from Section 10 thereof. Section 10 of the Act provides for recognition of qualifications by the INC of any authority which is recognized by the State Government in general nursing, midwifery related

courses. Section 10 and the Sub-Sections thereunder provide for application to the Council for recognition of qualification of the courses. Section 11 provides for effect of recognition while Section 13 relates to inspection to be under taken by the council. There is no provision in the Act with regard to affiliation of a Nursing College or School with the INC. Moreover, the petitioner has already been recognized by the State upon being granted the essentiality certificate and no objection certificate by the State. This is the admitted position. The stand of the petitioner is also buttressed by the document dated 9th December, 2020 which extracts part of the order of the Karnataka High Court holding that the INC has no authority to grant recognition to the Institutions imparting nursing courses.

The urgency pleaded on behalf of the writ petitioner is borne out by a Notification dated 7th October, 2021 of the INC which denotes 31st December, 2021 as the last date for admission to nursing programmes for the current year. The petitioner having been recognized by the SNRC and taken proprietary measures for the counselling and the other process for selection cannot certainly be made to suffer the consequences of an order which does not have statutory basis.

It is also an admitted position that the petitioner's application to the INC for inspection under Section 13 of the Act is pending.

The respondent no.7 being the Chairperson, Central Selection Committee (Nursing) is directed to take expeditious steps so that the petitioner can participate in the ongoing MOP-up counselling and other stages of the selection process.

In view of the above reasons, WPA 21145 of 2021 is disposed of with a direction on the respondent authorities not to take any steps in terms of the impugned order dated 30th November, 2021 with reference to the petitioner and to allow the petitioner to start the admission process in the nursing course for 2021-2022 session. The INC shall be at liberty to proceed with the inspection as mandated under the Act in the meantime.

(Moushumi Bhattacharya, J.)