

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 3353 of 2020

Lovekush Institute Of Nursing Gurukul College Parisar (Mahua Tikra) Pathalgaon, District- Jashpur, Chhattisgarh Run By Lovekush Educational Institute Of Technology, Registered Under The Society Registration Act 1973, Through The Vice President Lovekush Educational Institute Of Technology Registered Office H. No.28, Block-10, Sector-2, Kashiram Nagar Raipur, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary to the Govt. Of Chhattisgarh, Department Of Medical Education, Mahanadi Bhawan, Atal Nagar, Police Station Rakhi, Raipur, Chhattisgarh.
2. The Director, Directorate Of Medical Education, Old Nursing Hostel, Mantralaya Campus, Raipur, District- Raipur, Chhattisgarh.
3. Pt. Deendayal Upadhyay Memorial Health Sciences And Ayush University, Through The Registrar, Pt. Deendayal Upadhyay Memorial Health Sciences And Ayush University, G.E. Road- Raipur, District Raipur, Chhattisgarh
4. Chhattisgarh Nurses Registration Council, Through The Registrar, Chhattisgarh Nurses Registration Council, Old Nurses Hostel Directorate Health Services, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Anurag Dayal Shrivastava, Advocate
For State/Respondents No.1 & 2	:	Mr. Somkant Verma, Panel Lawyer
For Respondent No.3	:	Mr. Ajay Kumar Dwivedi, Advocate
For Respondent No.4	:	Mr. Vikash Dubey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21.01.2021

Heard

1. Challenge in this petition is to the order dated 03.12.2020 (Annexure P-1) whereby the recognition which was granted by the Chhattisgarh Nurses Registration Council, respondent No.4, wherein 30 seats were intake capacity given to the petitioner was reduced by the respondent No.3 i.e.

Pt. Deendayal Upadhyay Memorial Health Sciences & Ayush University up to 20.

2. Learned counsel for the petitioner would submit that the respondent No.3 is denuded of the power to exercise and reduce the intake capacity to the extent the affiliation for number of seat granted. It is stated it would amount to exceeding its jurisdiction under the Ayush And Health Sciences University Of Chhattisgarh Act, 2008 (*for short "the Act, 2008"*). He refers to Section 39, which is about withdrawal of affiliation and would submit that the scheme of Section 39 engraft that the rights conferred on a college by affiliation may be withdrawn, but certain procedure are to be followed wherein only motion is to be moved by the Council and eventually the order is required to be passed by the State Government. However, in this case, as per reply of the respondents, para 9, it is categorical stand of the University that the Standing Committee of the Academic Council has passed and resolved to reduce the intake capacity. Therefore, the said order would be illegal. He further submits that even the statute which are framed by the University, the statute 10 gives the Board of Management the power to pass the order; however, in this case since the order has been passed by the Academic Council, the same cannot be sustained. Therefore, the order is bad in law.
3. Learned counsel for the respondent No.3/ University would submit that the University in exercise of power under statute 10 has passed the order of reduction of the intake capacity from 30 to 20. He would submit that the affiliation has not been granted for 30 seats and presently the affiliation is only extended to 20 number of seats, therefore, the Academic Council was very much within its power as per the statute to pass such order.
4. Heard learned counsel appearing for the parties.

5. This is not in dispute that initially the petitioner Nursing College was granted affiliation for an intake capacity for 30 students on 28.11.2020 by Annexure P-3 wherein at serial No.95 the name of the petitioner institution appears. The said affiliation was granted by the respondent No.4 i.e. Chhattisgarh Nurses Registration Council. The affiliation having been granted for the capacity of 30 students what would have been the procedure to reduce the number of students which would amount to reduction of affiliation to the extent of 20 alone.
6. Section 39 of the Act, 2008 prescribed the procedure for withdrawal of affiliation, which reads as under :

39. Withdrawal of affiliation. - (1) *The rights conferred on a college by affiliation may be withdrawn in whole or in part or modified if the college has failed to carry out any of the provisions of sub-section (1) of Section 35 or the college has failed to observe any of the conditions of its affiliation or the college is conducted in a manner which is prejudicial to the interests of education.*

(2) *A motion for the withdrawal or the modification of such shall be initiated only in the Academic Council. The member of the Academic Council who intends to move such a motion shall give notice of it and shall state in writing the grounds on which it is made.*

(3) *Before taking the said motion into consideration, the Academic Council shall send a copy of the notice and written Statement mentioned in sub-section (2) to the Principal of the college concerned together with intimation that any representation in writing submitted within a period specified in such intimation on behalf of the college, will be considered by the Academic Council:*

Provided that the period so specified may, if necessary, be extended by the Academic Council.

(4) *On receipt of the representation or on the expiry of the period referred to in subsection (3), the Academic Council*

after considering the notice of motion, statement and representation and after such inspection by competent person or persons authorized by it in this behalf and such further inquiry as may appear it to be necessary shall make a report to the Board of Management.

(5) On receipt of the report under sub-section (4) the Board of Management shall, after such further inquiry, if any, as may, appear it to be necessary, record its opinion in the matter :

Provided that no resolution of the Board of Management recommending the withdrawal of affiliation shall be deemed to have been passed by it unless the resolution has obtained the support of two-thirds of the members present at the meeting of the Board of Management, such majority comprising not less than one-half of the members of the Board of Management.

(6) The Registrar shall submit the proposal and all proceedings, if any, of the Board of Management and the Academic Council relating therefor, to the State Government which, after such further inquiry, if any, as may appear it to be necessary, shall make such order as it deems fit and communicate it to the Board of Management.

(7) Where by an order made, under sub-section (6), the rights conferred by affiliation is withdrawn in whole or in part or modified, the grounds for such withdrawal or modifications shall be stated in the order.

7. Here in this case, as per the pleading and the document Annexure R-3/10.

The reduction of affiliation of 10 seats was made by the Academic Council of the University on 04.11.2020. As per statute the modification to the affiliation or withdrawal under Section 39 of the Act, 2008 engrafts that the Academic Council shall move a motion for withdrawal or modification and the notice thereof has to be given of it. Thereafter, the Academic Council send a copy to the Principal of the College concerned together with the intimation that the representation or reply would be considered by the

Council. On receipt of the representation, the Academic Council after considering the notice on motion and all the documents and inspection may order for further enquiry and shall make a report to the Board of Management. The Board of Management has been defined under Section 19 of the Act, 2008 wherein specified persons have been nominated in the Act to be the member of Board of Management. Likewise the Board of Academic Council is required to be constituted under Section 21 of the Act, 2008 wherein specified persons are also defined. Thereafter, as per the scheme of Section 39, the Board of Management after enquiry, if any, may record its opinion and thereafter the resolution be passed by the minimum two-third members present in the meeting and subsequently all the proceedings of the Board of Management and the Academic Council are required to be submitted to the State Government and the State Government after such enquiry shall make such order which deems fit and communicate it to the Board of Management. Therefore, it appears that three stage of check and balance has been created by the statute itself. The entity of the Board of Management and the Academic Council are distinct and has subsequently been codified in Section 19 & 21 respectively. Therefore, the area of operation of both the bodies are distinct and separate and the duties of each board are demarcated separately.

8. In the instant case, the Academic Council has solely used the power and reduced the affiliation of seats under its statute. Statute 10 on which the University has placed reliance reads as under :

“10. Withdrawal Of Privileges Granted To An Institution / College.

(1) Wherever, as a result of a prejudicial report or otherwise the Board of Management considers it necessary to initiate action for the withdrawal of all or any of the privileges granted to an institution/College, the Board of

Management shall issue a notice to the Governing Body or the Government as the case may be, apprising the said body of the intention of the Board of Management and requiring the said body to show cause why action as intended should not be taken.

Provided that where an Institution/ College is admitted to the privileges of the University for a definite period and the admission is not extended for a further period, it shall not amount to withdrawal of privileges.

(2) The notice under sub-Para (1) shall state :

(a) The reasons for which the intended action is contemplated;

(b) The period within which the reply to the show cause notice must reach the Registrar of the University.

(3) The Board of Management, for reasons considered sufficient by it, may extend the period for reply from time to time but the total period shall not exceed three months.

(4) On receipt of the reply of the show cause notice within the period allowed to the institution/College under sub para (2) and (3), the Board of Management may consider the matter in the light of the reply and representation made, if any, by the institution/ College concerned, and if no such reply is received, it may consider the matter on the expiration of the said period, and may after consulting the Academic Council/ Standing Committee of the Academic Council make such order as may appear to it proper including the withdrawal of all or any of the privileges granted to the institution/ College.

(5) Where a resolution withdrawing wholly or partially the privileges granted to an institution/College is passed by the Board of Management, a copy of the same shall be sent to the Government, Chairman of the Governing Body of the institution/College concerned. The government may take action as per provision of the Act.

(6) If for any reason, an institution/college is unable to impart instruction for two years in any program/subject for which it is granted affiliation, such affiliation shall be regarded as lapsed.”

9. The statute 10 (1) starts with the word that if it held otherwise, the Board of Management considers it necessary, meaning thereby it is the Board of Management who will initiate any independent proceeding under the statute 10. Therefore, it cannot be amalgamated to the power of the Academic Council which is a distinct entity and the statute 10 also prescribed that Board of Management has the power to pass the subsequent order after due verification and enquiry. The statute do not vest the Academic Council to exercise such power. Therefore, the power of reduction and withdrawal of the seat which has been made by the Academic Council cannot be legalized or can be said to have fallen within the ambit of Section 39 of the Act, 2008 or statute 10 which is framed by the University under the Act of 2008.
10. In a result, the order dated 03.12.2020 (Annexure P-1) is quashed. The petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge

Aks