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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4671 of 2021

1. Shri Shankaracharya College of Nursing (Run By Shri Gangajali Education Society) Amdi Nagar Hudco, Bhilai District Durg Chhattisgarh 490009 Through Anil Kumar Puranik, S/o Late Shri Ramsahay Puranik, Aged 59 Years, R/o H.No. 41/1270 Shanti Vihar Colony Danganiya, Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya Capital Complex, New Raipur, District Raipur Chhattisgarh
2. Director Medical Education, Old Nurses Hostel DKS Bhawan Compound, Raipur Chhattisgarh
3. Chhattisgarh Nurse Registration Council, through its Registrar, Old Nurses Hostel, Director, Health Services Raipur Chhattisgarh
4. Indian Nursing Council, through its Secretary Indian Nursing Council, 8th Floor NBCC Center, Plot No.2, Community Center Okhla, Phase 1 New Delhi.
5. Pt. Deendayal Upadhyay Memorial Health Science and Ayush University, through its Registrar, at Upwara, Atal Nagar (Nava Raipur), Sector 40, Raipur Chhattisgarh

---- Respondents

WPC No. 4639 of 2021

- Oriental College of Nursing Manikpur, Korba District Korba (C.G.) through the Authorized Signatory, Mr. Rajkumar Garg S/o Shri M.K. Garg, Aged About 38 Years, R/o Oriental College of Nursing, Manikpur, Korba District Korba Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, through its Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya Capital Complex New Raipur District Raipur Chhattisgarh
2. Indian Nursing Council, through its Secretary, Indian Nursing Council, 8th Floor NBCC Center, Plot No.2, Community Center Okhla, Phase 1 New Delhi
3. Chhattisgarh Nurses Registration Council, Old Nurses Hostel, Director Health Services, Raipur Chhattisgarh.
4. Pandit Dindayal Upadhyay Memorial Health Science and Ayush University, through its Registrar Sector 40, Uparwara New Raipur Chhattisgarh

---- Respondents

Mr. Kshitij Sharma, Advocate for the petitioner (in WPC No.4671/2021),
Mr. Rahul Takaskar, Advocate for the petitioner (in WPC No.4639/2021).

Ms. Akanksha Jain, Deputy Govt. Advocate and Ms. Sameeksha Gupta, Panel Lawyer for State/Respondents No.1 to 3

Mr. T.D. Diwan, Advocate on behalf of A.S.G. for Respondent-Indian Nursing Council.

Mr. Ajay Kumar Dwivedi, Advocate for Respondent-Pt. Deendayal Upadhyay Memorial Health Science and Ayush University (respondent No.4 in WPC No.4639/2021 and respondent No.5 in WPC No.4671/2021)

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-11-2021

1. Bot these petitions have been filed being aggrieved by the inaction of respondent Pandit Dindayal Upadhyay Memorial Health Science and Ayush University, Raipur.

2. It is submitted by learned counsel for the petitioners in both the cases that the petitioners institutions are private institutions imparting and conducting various courses including B.Sc. (Nursing) course and also course of General Nursing and Midwifery (GNM). It is submitted that the respondent No.4-Indian Nursing Council has issued notification dated 6th January, 2021. In Clause III of this notification it is provided that all the schools of Nursing running GNM courses recognized by the State Nurses and Midwives Registration Council (SNRC) and found suitable by the Council under Section 13 and 14 of the Indian Nursing Council Act, 1947 (in short 'the Act, 1947') shall be eligible to be upgraded to College of Nursing offering B.Sc. (Nursing) course. Such institutions are required to file applications under clause 4 of the notification dated 06-01-2021 to SNRC. The SNRC then shall take decision about suitability for upgrading the school of Nursing to College of Nursing under Section 13 and 14 of the Act, 1947. The petitioners have filed such applications. Petitioner Shri Shankaracharya College of Nursing has been granted permission for upgradation by the SNRC by order dated 21-10-2021. By an order of similar date petitioner Oriental College of Nursing Manikpur, Korba has also been granted permission by the SNRC.

3. It is submitted that clause 5(iii) of the notification dated 06-01-2021

requires that the upgraded College of Nursing conducting the B.Sc. (Nursing) course however shall be required to get affiliation from the concerned University. It is further provided in clause 6(ii) of the same notification that the the colleges which were earlier conducting both GNM and B.Sc. (Nursing) courses, the intake capacity for upgrading Nursing courses shall include the intake capacity of GNM course, which shall be in addition of the intake capacity the B.Sc. (Nursing) course. Petitioner Shri Shankaracharya College of Nursing had intake capacity of 100 seats in B.Sc. Nursing courses and before upgradation the intake capacity with GNM course was of 40 seats. Similarly, petitioner Oriental College of Nursing Manikpur, Korba had intake capacity of 30 seats in GNM course apart from the sanctioned intake capacity of Nursing courses.

The petitioner Shri Shankaracharya College of Nursing has filed representation dated 30-10-2021 and the petitioner Oriental College of Nursing Manikpur, Korba has filed application/representation dated 25-10-2021, on which respondent No.5 and 4 respectively, have not taken any decision so far.

Section 35 of the Ayush and Health Sciences University of Chhattisgarh Act, 2008 (in short 'the Act, 2008') provides for affiliation by the university. According to the procedure as provided in this Section, the notification dated 06-01-2021 is binding upon the respondents as it is a notification issued by the Indian Nursing Council.

Reliance has been placed on the judgment of Karnataka High Court in the matter of **Union of India and another Vs. KMJ College of Nursing (Trust), Bangalore and others**, 2005 SSC OnLine Kar 249 and on the judgment of same High Court in the matter of The Karnataka State Association of the Management of Nursing and Allied Health Science Institutions Vs. Union of India in Writ Petition No.25355/2007 and batch of other petitions decided on 24-07-2021.

It is further submitted that last date for taking admission in the Nursing courses prescribed is 31st of December, 2021. Therefore, appropriate order be passed directing the respondent university to decide the representations filed by the petitioners and take decision within a time frame.

4. The State counsel representing respondents No.1, 2 and 3 submits that the State authority has performed its part. The SNRC has granted permission for upgradation to both the petitioner institutions, therefore, the petitioners are not required to seek any relief from the State authority.

5. Learned counsel for respondent Indian Nursing council makes formal objection.

6. Learned counsel for respondent No.4 in WPC No.4639/2021 and respondent No.5 in WPC No.4671/2021 opposes the submission. It is submitted that both the petitioner institutions have been granted permission for upgradation recently. Their prayer for affiliation has been made recently in the month of October, 2021, whereas, according to the notification issued by respondent No.1 dated 05-06-2021, the last date for submission of fees for affiliation was 31st of July of the current year. Any application submitted subsequent to this date, shall not be considered in the matter of granting affiliation for the current year. The petitioners have the liberty to make prayer for affiliation for the year 2022 after making deposit of requisite affiliation fees with the university. Therefore, both the petitions are liable to be dismissed.

7. Heard learned counsel for the parties and perused the documents.

8. Considered on the submissions. Section 5(18) of the Act, 2008 empowers the university to affiliate, approve or recognize colleges and institutions and to withdraw such affiliation, approval or recognition and Section 35 of the Act, 2008, is for the procedure to be adopted by university for granting affiliation to the institutions on their application.

9. The petitioners in both the cases have filed representation on the basis of new development, i.e., issuance of notification dated 05-06-2021 and in accordance with the regulation in the notification the petitioners were granted permission for upgradation on 21-10-2021. With these developments the petitioners had entitlement to take admission in GNM courses and after grant of permission to upgrade to Nursing school in the vacant seats of GNM courses admissions have to be taken for B.Sc. Nursing Course. This permission was granted by the SNRC on 21-10-2021 and immediately thereafter the petitioners have filed the application before respondent No.5 and 4 to comply with clause 5(iii) of the notification dated 06-01-2021. Clause 5(iv) of the notification dated 06-01-2021 is as follows:-

“(iv) The concerned University shall grant affiliation without insisting on a fresh State Government Order or such other requirements since the upgraded institution already stands recognized by the respective State Govt. and is found suitable by the Council under the Sections 13 and 14 of the Act.”

10. In view of this provision clause 5(iv) of the notification dated 06-01-2021 university is bound to follow the mandate given in the notification dated 06-01-2021. As regards the notification of the university dated 05-06-2021 regarding last date of submission of fees for affiliation, that appears to be an administrative order, which shall be applicable to the institution and education courses already continuing. The present is a different case, the Act, 2008 also does not provide for any such limitation regarding which the submission has been made by respondent Pandit Dindayal Upadhyay Memorial Health Science and Ayush University. Hence, that being an administrative order, the same cannot be made a ground to avoid compliance of the law and also notification which is referred hereinbefore. Hence, on the basis of these reasons, both the petitions are disposed off at motion stage. Respondent Pandit Dindayal Upadhyay Memorial Health Science and Ayush University is

directed to consider on the representation filed by the petitioners at the earliest and take decision on the same following the procedure as laid down under Section 35 of the Act, 2008 and take decision preferably on or before 10-12-2021. With these observations and directions both the petitions are disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil