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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.537 OF 2014
WITH
NOTICE OF MOTION NO.164 OF 2018
WITH
CHAMBER SUMMONS NO.261 OF 2017
AND
INTERIM APPLICATION (LODGING) NO.11231 OF 2018

Seva Mandal Education Society's
College of Nursing & Anr.

...Petitioners

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr.Prosper D'Souza for the Petitioners / Applicants.

Mr.Kedar Dighe, AGP or the Respondent Nos.1 and 2.

Mr.Ahjit M. Savagave for the Respondent Nos.3.

Mr.R.V. Govilkar with Mr.Mihir Govilkar and Ms.Shaba N. Khan for
the Respondent No.4.

**CORAM : R.D. DHANUKA &
R.N. LADDHA, JJ.**

DATE : 7TH DECEMBER, 2021.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari for quashing and setting aside the decision of the respondent no.3 dated 25th October, 2013 thereby rejecting the application / representation made by the petitioners for permission to conduct Common Entrance Test (CET)

of the students to B.Sc. Nursing Course for academic year 2013-2014 as minority institution. The petitioners seek a writ of mandamus for permitting the petitioners to hold Common Entrance Test (CET) for the admission to the first year B.Sc. Nursing Course to admit the minority students and also to permit the petitioners to fill the seats remaining vacant after admission of the students from the non-minority students who had appeared for the CET conducted by the petitioners.

2. The petitioner no.1 is Nursing College conducting B.Sc. Nursing Course established by the petitioner no.2. The petitioner no.1 was granted minority certificate on 18th January, 2011 and conducted B.Sc. Nursing Course with the capacity of 40 students. The Indian Nursing Council vide letter dated 28th February, 2012 issued to the respondent nos.1 and 2 and the Maharashtra University Council granted permission to conduct B.Sc. Nursing Course with effect from the academic year 2011-2012 with an intake of 40 seats.

3. The Maharashtra University Council vide letter dated 19th August, 2013 has duly recorded continuation of affiliation to the B.Sc. Nursing Course being conducted by the petitioner no.1 and published a timetable / programme for admissions to the B.Sc. Nursing Course in respect of the petitioner no.1 Institution. As per the notification those students who have appeared in the NEET – UG

were eligible to make application to the petitioner institution as per the timetable specified. The petitioner institution accordingly issued an advertisement inviting applications from the eligible students on 28th September, 2013 who have appeared for the NEET-UG. The petitioner institution however, could get 13 students out of 40 total sanctioned seats on 30th September, 2013 by which NEET-UG admission process came to an end as per the prescribed timetable. The said 13 students were accordingly granted admission strictly as per merit.

4. Remaining seats were vacant in the petitioner no.1 institution. The petitioner no.1 thereafter applied for permission to hold CET of its own. Such application / representation however was rejected by the authority on 25th October, 2013. The petitioners thus filed this petition.

5. This Court passed an interim order on 12th December, 2013 after adverting to a later judgment delivered after the judgment of the Hon'ble Supreme Court in case of Islamic **Academy vs. State of Karnataka, (2003) 6 SC 697** and held that the Apex Court has clearly held that CET can be conducted by the Minority Institutes. This Court also adverted to the judgment dated 4th September, 2013 in Writ Petition (Lodging) No.1970 of 2013 permitting the petitioner to conduct CET in that writ petition. This Court granted *ad-interim* stay

to the impugned order dated 25th September, 2013 and permitted the petitioner to conduct Common Entrance Test for admission to the first year B.Sc. Nursing Course for the academic year 2013-2014 for minority students. This Court however, had clarified that the students who would pass the said CET and would be given admission in the said course, would be subject to further orders that would be passed in this petition.

6. Mr.D'Souza, learned counsel appearing for the petitioners on instructions states that pursuant to the said ad-interim order passed by this Court, the petitioner conducted said CET examination. Out of 27 seats, all the students could not pass in the said CET examination conducted by the petitioner no.1.

7. Learned counsel for the petitioners placed reliance on unreported judgment delivered by a Division Bench of this Court on 25th August, 2020 in case of **Maharashtra Medical Education & Research Centre & Anr. vs. State of Maharashtra & Ors.** in Writ Petition No.5328 of 2019 and more particularly paragraphs 12, 16, 24 and 25 and would submit that after adverting to the judgment in case of **P.A. Inamdar & Ors. vs. State of Maharashtra, 2018 OnLine Bom.10795**, this Court has protected the admissions granted in the case of **P.A. Inamdar & Ors.** (supra) and **Maharashtra Medical Education & Research Centre & Anr.** (supra) for the academic year

2015-2016.

8. Mr.Govilkar, learned counsel appearing for the respondent no.4 – University, Mr.Savagave, learned counsel appearing for the respondent no.3 and Mr.Dighe, learned AGP for the respondent nos.1 and 2 could not distinguish the judgment delivered by the Division Bench of this Court in case of **Maharashtra Medical Education & Research Centre & Anr.** (supra).

9. Mr.D'Souza, learned counsel for the petitioners states that those students who were admitted pursuant to the ad-interim order passed by this Court have been already issued mark sheets however, not issued the degree certificates.

10. In our view, the principles laid down by this Court in case of **Maharashtra Medical Education & Research Centre & Anr.** (supra) would apply to the facts of this case. We do not propose to take a different view in the matter.

11. This Court in the the said ad-interim order dated 12th December, 2013 after adverting to the subsequent judgment has clearly held that the said CET can be conducted by the minority institution. The said *ad-interim* order passed by this Court was not challenged by any of the respondents before the Hon'ble Supreme Court. The Division Bench of this Court in case of **Maharashtra Medical Education & Research Centre & Anr.** (supra) also after

advertising to various judgments of the Hon'ble Supreme Court including in case of .A. Inamdar & Ors. (supra) as also the judgment delivered by the Division Bench of this Court has taken similar view, we accordingly pass the following order :-

- a). The writ petition is allowed in terms of prayer clause (a).
- b). The respondent no.4 – University is directed to issue degree certificate in favour of those students who have been declared passed pursuant to the CET examination conducted by the petitioner no.1 by implementing the ad-interim order passed by this Court on 12th December, 2013 within three weeks from the date of communication of this order.
- c). Rule is made absolute accordingly.
- d). There shall be no order as to costs.
- e). Parties to act on the authenticated copy of this order.

(R.N. LADDHA, J.)

(R.D. DHANUKA, J.)

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