



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2021

Pronounced on : 31.03.2021

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P (MD) No.18310 of 2019

and

W.M.P. (MD) Nos.14753 and 14754 of 2019

WEB COPY

The Correspondent,
Christian College of Nursing,
Kanyakumari Medical Mission
CSI Diocese of Kanyakumari,
Neyyoor and Post - 629 802,
Kanyakumari District.

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009.

2.The Nursing Council of India,
Rep. by its Secretary,
8th Floor, NBCC Centre,
Plot No.2, Community Centre,
Okhla Phase - I,
New Delhi - 110 020.

3.The Tamil Nadu Nurses and Midwives Council,
Rep. by its Registrar,
Jeyaprakash Narayanan Maligai,
Santhome High Road, Mylapore,
Chennai - 600 004.

4.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

5.The Tamil Nadu Dr.M.G.R. Medical University,
P.B. No.1200, No.69, Anna Salai,
Guindy, Chennai - 600 032.
Rep. by its Registrar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the fifth respondent university in Rc.No.Affln II(3)/43665/2019, dated 31.07.2019, and quash the same, and further direct the fifth respondent the TN Dr.M.G.R. Medical University to sanction the



increase in the admission capacity for the B.Sc., Nursing course in the petitioner college from the present 50 to 100 seats per annum from the the academic year 2019-2020.

For Petitioner : Mr.Mr.Isaac Mohanlal,
Senior Counsel
for Mr.K.Ragatheesh Kumar

For R-1, R-3 & R4 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

For R-2 : Mr.R.Murali
For R-5 : Mr.S.Ramesh

ORDER

The petitioner college is one among the several educational institutions owned and administered by the Church of South India diocese of Kanyakumari, which is a recognized Christian religious Minority Educational Institution. The Kanyakumari Diocese among several institutions runs two Nursing colleges, one of which is the petitioner institution.

2.The petitioner institution was established by the diocese in the academic year 1998-1999. The State Government vide G.O.Ms.No.570, Health and Family Welfare (PME) Department, dated 26.10.1998 had accorded permission for the start of the institution. In pursuance of which, the fifth respondent university granted affiliation for conducting B.Sc., (Nursing) course with the annual intake of 50 students vide its proceedings dated 23.09.1999. The third respondent Council also granted recognition vide its letter dated 28.05.2002 and the second respondent, who is a centralized regulatory authority, has granted its approval vide Certificate dated 22.06.2004.

3.The college with the annual intake of 50 students started functioning from the academic year 1998-1999 and has been offering four years B.Sc., (Nursing) degree course. From the academic year 2006-2007, the college started offering two year M.Sc., (Nursing) course in four specialities with the annual intake of 5 students in each speciality, totally 20 students in all. The college is now offering both B.Sc., (Nursing) Undergraduate course as well as M.Sc., Postgraduate courses with the intake of 50 students and 20 students respectively.

4.The object of establishing the petitioner college was to train nurses required for the various hospitals, dispensaries and paramedical institutions run by the petitioner diocese. The purpose of founding the institution was to cater to the hospital requirements run by the diocese with qualified nurses considering the petitioner college as one of the feeding institutions. The college is a self-financed college receiving no grant-in-aid



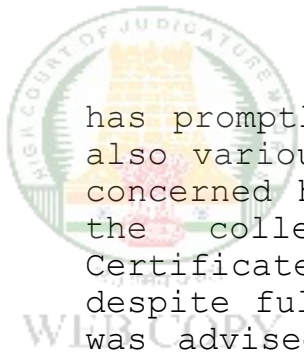
or financial assistance from the Government.

5.The college over a period of time has put up sufficient infrastructural and instructional facilities for the purpose of increase in annual intake of students in order to serve the requirement of the diocese run hospitals, dispensaries and also the number of aspirants seeking to pursue nursing courses in the district. The college, therefore, has decided to seek permission from the fifth respondent university which is a competent authority for enhancement of its intake from 50 to 100 students from the academic year 2016 onwards. According to the college, though there was no requirement under any regulation for obtaining "No Objection Certificate/Essentiality Certificate" from the first respondent, it was originally advised to get the certificate for enhancement of annual intake from 50 to 100 and hence, the college submitted application to the first respondent on 20.07.2016 through the fourth respondent seeking permission for enhancement of the annual intake from 50 to 100 students and along with the application necessary fees had also been paid.

6.On receipt of the application from the petitioner college, the first respondent addressed a communication, dated 12.08.2016, directing the fourth respondent Director to inspect the petitioner college and submit a report in terms of the approval norms laid down by the second respondent/Indian Nursing Council. At this, the fourth respondent vide proceedings dated 29.08.2016 directed the petitioner college to furnish certain additional particulars for the purpose of causing inspection.

7.In response to the direction, the petitioner college appears to have submitted particulars required by the fourth respondent on 17.10.2016 and also paying the additional fees as required. Thereafter, further information was sought by the fourth respondent and the same was also furnished to the satisfaction of the fourth respondent. Thereafter, the fourth respondent nominated an inspection team for the conduct of the inspection and the inspection was conducted on 20.12.2016. The inspection team, after verification of all the infrastructural and instructional facilities put up and made available by the college, was satisfied and found that the petitioner college had fulfilled all the norms that are mandatory and essential as specified and prescribed by the second respondent Council. According to the petitioner, the copy of the enquiry report, however, was not furnished to the college.

8.According to the petitioner college, notwithstanding the completion of the inspection and the inspection team being satisfied with the facilities made available by the college for justifying the enhancement of the annual intake, further more information and particulars were directed to be produced by the college on a piecemeal basis like a demand of Solvency Certificate for Rs.30 lakhs, purchase bills of library books, etc. The petitioner college



has promptly obliged with the demands of the fourth respondent and also various other documents additionally required by the officials concerned had also been furnished without any delay on the part of the college. In the meanwhile, as the No Objection Certificate/Essentiality Certificate had not been forthcoming, despite fulfillment of all the norms by the college, the petitioner was advised that there was no legal requirement for obtaining No Objection Certificate from the Government, for the reason that in the statutes of the fifth respondent university permission for enhancement of seats is provided for, for which a separate Form-V had been prescribed. The university in terms of the relevant statutory regulations may conduct inspection on its own and if it is satisfied with the infrastructural and instructional facilities, it can independently report to the second respondent Council with recommendation for enhancement of the annual intake of the students. In that view of the matter, approaching the Government for No Objection Certificate for the purpose of seeking enhancement of seats was not legally required. Therefore, the fifth respondent university was approached by the college for seeking permission for enhancement of the annual intake of students from 50 to 100 in nursing undergraduate course (B.Sc., Nursing). At this, the fifth respondent university by its proceedings dated 31.07.2019 refused to entertain the application on the ground that the application will be considered only after a permission is granted by the State Government for increase of the seats and only on such permission being granted, further action would be taken on the request of the petitioner. Challenging the order dated 31.07.2019 of the fifth respondent university, the petitioner college is before this Court.

9.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner college would at the outset submit that the impugned proceedings of the fifth respondent university has to be discountenanced both on facts and in law. First of all, there is no regulation which mandates requirement of permission or No Objection Certificate by the State Government and therefore, the insistence on getting permission from the Government by the fifth respondent university is without the authority of law. He would further submit that the university being governed by self-contained statute of its own and when the statutory regulations, particularly, statutes 37 to 44 provide for consideration of request for increase of seats in Undergraduate course and when an application was made in terms of the said regulations, it was not open to the university to direct the college to get permission from the Government. The fifth respondent university being fully governed by the statutes is enjoined with independent power and an exercise of power is not referable to any approval or nod from the Government. Therefore, the learned Senior Counsel would submit that the direction of the university to get permission from the Government in the circumstances of the case amounted to abdication of its statutory responsibility cast on the university.



10. In this regard, the learned Senior Counsel would also refer to statute No.107 which reads as under:

"All the norms prescribed by the Indian Nursing Council, State/Central Government may be applied by the University in the area not covered by the Statutes Ordinances and regulations framed by the Tamil Nadu Dr.M.G.R. Medical University, Chennai for existing/starting of a new Nursing College whenever considered necessary."

11. From the above, it could be seen that only in respect of norms which are not covered by the university regulations, the State or Central Government's norms may be applied. In this case, when statutes 37 to 44 clearly provide for a procedure for grant of enhancement of annual intake of undergraduate courses, the question of Government's intervention in the matter did not arise at all.

12. The learned Senior Counsel would also submit that even otherwise, from the documents filed on behalf of the Government, the claim of the petitioner college was further justified. The learned Senior Counsel would draw the attention of this Court to the copy of the inspection team report dated 20.12.2016 and the report finally concluded as under:

"FINAL REPORT OF THE INSPECTION TEAM

We do hereby declare that all the physical facilities have been personally inspected/verified are listed in the report.

Also we do hereby declare that the infrastructural facilities in terms of Land, Buildings, Lab and Equipments, Library, Vehicle, Teaching Staff and Clinical facilities are adequate to enhancement of seats from 50 to 100 students per annum in Basic B.Sc., Nursing at Christian College of Nursing, Neyyoor, Kanyakumari District."

13. Further to the inspection report, a communication dated 30.12.2016 emanated from the fourth respondent seeking submission of a few more documents like Solvency Certificate, copy of endowment fund, purchase bills of library books, etc., which were duly complied with already by the petitioner college by communication dated 30.12.2016. The college appears to have at once obliged with the documents sought by the fourth respondent. Thereafter, vide letter dated 24.01.2017, the fourth respondent has addressed a lengthy communication to the first respondent giving meticulous details as to the availability of infrastructural and instructional facilities of the college and finally recommended for issuance of



necessary orders by the Government for enhancement of annual intake from 50 to 80 seats for the academic year 2017-2018 by enclosing the inspection report along with the communication. These documents are all part of the typed set filed on behalf of the State Government.

14.The learned Senior Counsel would, therefore, submit that in the face of the finding of the inspection team and also the recommendation of the fourth respondent to the Government by its communication dated 24.01.2017, unfortunately, the Government has not issued any orders granting permission or Essentiality Certificate for the college to approach the second respondent seeking necessary approval for the increase in their annual intake.

15.The learned Senior Counsel would sum up that the college is entitled to succeed on two grounds - one that no permission is necessary at all like Essentiality Certificate etc., as the fifth respondent university to which the college is affiliated, is the competent authority for consideration of the claim of the the petitioner for enhancement of seats. The university, which is governed by the self-contained statutory regulation, is the authority in itself for grant of permission and therefore, the impugned proceedings of the university dated 31.07.2019 is issued on erroneous appreciation of its power and authority and therefore, it has to be set aside on that ground alone.

16.Even otherwise, as the documents filed by the Government itself would disclose that the inspection had been conducted on the basis of the direction of the Government (Health Department) in its letter dated 14.11.2016 and the report is fully in favour of the college and further, the letter of the fourth respondent dated 24.01.2017 recommending to the Government for issuance of appropriate orders in consideration of the claim of the petitioner, there is no legal impediment as on date for issuance of the necessary certificate by the Government, even assuming the Government has any say in the matter at all, in first place.

17.The above submission of the learned Senior Counsel is in reply to the contention of the State Government stating that vide G.O.Ms.No.219, Health and Family Welfare (PME-2) Department, dated 06.06.2018, the Government has made it mandatory for seeking its permission for any enhancement of seats in terms of paragraph (x) of Annexure to the Government Order which reads as under:

"x. No increase in seats over and above shall be permitted without prior approval of the Government. Every time any increase in seats is contemplated, the Government should be intimated at least six months in advance. Increase of seats, can be considered only after the full payment of the Endowment Bank guarantee, furnishing of the Solvency Certificate and completion of all facilities including staff and equipment and obtaining the affiliation



of the Tamil Nadu Dr.MGR Medical University, recognition of Indian Nursing Council of India and after the first batch has successfully completed the entire course."

18.According to the learned Senior Counsel, in fact, even this argument cannot be held to be valid for the simple reason that it is a well settled principle that the impugned order cannot be developed by way of counter affidavit. The proceedings of the university dated 31.07.2019 did not refer to any Government order and in fact, it is a cryptic order without reference to any instructions or regulations. In any case, the learned Senior Counsel summed up that today there is nothing against the petitioner institution and a direction may be issued to the Government for expediting the orders to be passed in terms of the recommendations of the fourth respondent and also in pursuance of the inspection report dated 20.12.2016.

19.Mr.J.Gunaseelan Muthiah, learned additional Government Pleader appearing for the Government would submit that in terms of G.O.Ms.No.219, Health and Family Welfare (PME-2) Department, dated 06.06.2018, it is mandatory that the institution must obtain permission from the Government. In any case, the objection is no more valid or relevant, since the inspection on the direction of the Government had already taken place and the report is in favour of the petitioner college and further the fourth respondent has also recommended justifying the claim of the petitioner college for increase in annual intake of students and requested the Government for issuance of appropriate orders.

20.As far as the objections of the fifth respondent university is concerned, that unless the petitioner college obtained permission from the State Government, it cannot process the application, it relied on the latest Government Order in G.O.Ms.No.219, Health and Family Welfare (PME-2) Department, dated 06.06.2018 as the basis of its objection. In fact, in the counter affidavit filed by the university the statute 107 has been extracted but very strangely, the stand of the university as disclosed in the counter affidavit, is contrary to the very statute itself governing the administration of the university.

21.As far as the second respondent's contention is concerned, the same may not be really relevant as on date in view of the above developments which have been stated above.

22.From the above narrative, there are two issues which arise for consideration of this Court. The first legal contention of the learned Senior Counsel for the petitioner is that there was no legal requirement at all for the petitioner college to obtain No Objection Certificate or Essentiality Certificate from the Government. In this regard, the learned Senior Counsel would refer to the relevant



attention to Statute 36 under the caption "Grant of Continuance of Provisional Affiliation Subsequent Batches of B.Sc., (Nursing) Degree Course", wherein elaborate procedure has been laid down particularly in statutes 41 to 44 which are extracted hereunder:

41. On receipt of the application from the applicant for increase in seats the University along with the Inspection Proforma duly filled in shall appoint an Inspection Commission to inspect the suitability of the facilities provided by the college for such increase in seats. A payment receipt for Rs.30,000/- (Rupees thirty thousand only) or such amount as may be prescribed by the Governing Council from time to time, shall be paid by the applicant towards the inspection fee.

42. The Inspection Commission referred to in statute 41 shall report to the University duly verifying the filled-in Inspection Proforma as to whether all the requirements specified in statute 40 have been provided by the applicant. The Inspection Commission shall also point out in its report the lacunae, if any, in the fulfillment of the requirement to be provided and also advise as to the capability of the applicant to rectify the lacunae within a period of 30 (thirty) days from the date of receipt of the University communication/letter. The University shall conduct re-inspection wherever necessary on production of a payment receipt for Rs.30,000/- (Rupees thirty thousand only) or such amount as may be prescribed by the Governing Council from time to time made by the applicant towards the re-inspection fee and shall receive a final report from the Inspection Commission.

43. On receipt of the final report of the above Inspection Commission, and if the report is found satisfactory, the University shall issue/recommend to the Indian Nursing Council for an inspection and concurrence.

44. On receipt of the concurrence from the Indian Nursing Council to increase the seats in the college concerned the University shall grant permission to the college concerned to admit students in the seats so increased."

23. In consideration of the above clear statutory provisions of the university, there cannot be any two opinions about the independent power exercisable by the university for consideration of the application submitted by the petitioner college for enhancement of annual intake of students in the undergraduate courses in nursing.

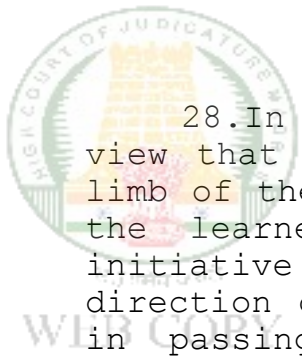


24.This Court finds there is great force in the submission of the learned Senior Counsel on this aspect and it is incomprehensible that as to how the university could insist on the petitioner college obtaining No Objection Certificate and permission from the Government in the teeth of its own statute itself providing them the adequate power to deal with such claims. The fifth respondent university appears to have not appreciated its own power vested in it under the regulations.

25.The contention of the Government regarding G.O.Ms.No.219, Health and Family Welfare (PME-2) Department, dated 06.06.2018 which provide for seeking its permission for enhancement of seats may not be a legally acceptable argument for the simple reason that the Government Order cannot be allowed to override a statutory provision of the university. The requirement of permission of the Government on the basis of the Government Order is liable to be held as uncalled for and illegal in the face of the clear statutory provisions of the university. Therefore, on the first legal contention of the learned Senior Counsel canvassed on behalf of the petitioner, the college is entitled to succeed as it is well within the power of the university to consider the claim of the petitioner seeking enhancement of seats for the undergraduate nursing course without insisting on No Objection Certificate or Essentiality Certificate from the Government.

26.Be that as it may, the subsequent development as it is unfolded and as demonstrated by the petitioner from the documents filed on behalf of the Government itself that the inspection had taken place at the very instance of the first respondent Government and the inspection team had categorically concluded its final report in favour of the petitioner college, as extra supra. Thereafter, the fourth respondent being fully satisfied with the compliance of all the mandatory norms and the requirements has recommended by its letter dated 24.01.2017 to the first respondent and requested the Government for issuance of necessary orders at the earliest.

27.As rightly argued by the learned Senior Counsel for the petitioner that after the letter of the fourth respondent dated 24.01.2017, there was no legal impediment for the Government to issue necessary orders in complying with the request of the petitioner, even assuming their permission is required but unfortunately this Court has not been informed of any information as to why the Government is dragging its feet for more than three years when the petitioner has factually justified all the norms that are essential and mandatory justifying their claim in seeking enhancement of annual intake of students from 50 to 100.



28. In the above circumstance, this Court is of the considered view that notwithstanding the findings of this Court in the first limb of the legal contentions raised on behalf of the petitioner by the learned Senior Counsel, in view of the Government's own initiative in response to the request of the petitioner college, a direction can be issued to the Government to take an immediate call in passing final orders on the subject matter, enabling the petitioner college to pursue its approval request with the second respondent for starting of the course at least from the present academic year with the enhanced intake of 100 students.

29. In the said circumstances, the impugned order of the university passed in Rc.No.Affln II(3)/43665/2019, dated 31.07.2019 is hereby set aside as being illegal and void and consequently, the first respondent is directed to pass appropriate orders on the basis of the recommendations of the fourth respondent in its letter Ref.No.64428/NE1/2016, dated 24.01.2017 within a period of four weeks from the date of receipt of a copy of this order.

30. On receipt of the orders, the petitioner may approach the second respondent for grant of approval and on such request being made by the petitioner, the second respondent herein is directed to grant necessary approval to the petitioner college as expeditiously as possible but not later than four weeks from the date of request of the petitioner college with the supportive material.

31. The Writ Petition is allowed in full as above. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

1. The Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009.

2. The Secretary,
Nursing Council of India,
8th Floor, NBCC Centre,
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Tamil Nadu Dr.M.G.R. Medical University,
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+1 CC to M/s.R.MURALI, Advocate (SR-11252[F] dated 16/03/2021)

+1 CC to M/s.S.RAMESH, Advocate (SR-14848[F] dated 31/03/2021)

+1 CC to M/s.R.MURALI, Advocate (SR-14870[F] dated 31/03/2021)

+3 CC to M/s.ISAAC CHAMBERS, Advocate (SR-15095[F] dated 01/04/2021)

Order made in
W.P (MD) No.18310 of 2019
31.03.2021

RK (29.04.2021) 11P 12C