

**19.01.2022**  
**sayandeep**  
**Sl. No. 05**  
**Ct. No. 05**

**WPA 488 of 2022**

**[Via Video Conference]**

Debnath Nursing Training Institute  
-Versus-  
The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri  
..... for the petitioner

Mr. Swapan Kr. Datta  
..... for the State

Mr. Nilotpall Chatterjee  
.... for the INC

Mr. D.N. Maiti  
... for the respondent No. 5

Mr. Rajat Dutta  
.... for the respondent

The challenge in this writ petition is to a communication of the West Bengal Nursing Council dated 28<sup>th</sup> December, 2021 by which the release of the final permission to the petitioner for opening a new School of Nursing and Nursing College for conducting the specific courses was made conditional upon the petitioner receiving the supporting documents confirming that the petitioner has obtained necessary permission from the Indian Nursing Council (INC).

According to learned counsel, the relevant statute does not require any permission

to be taken from the INC before opening of a Nursing School/College. Counsel submits that the role of INC comes later at the time of inspection.

Learned counsel appearing for the INC submits that the petitioner has not provided any particulars of compliance with Section 23 of the Act or the conditions mentioned in the Essentiality Certificate issued by the State on 15<sup>th</sup> December, 2021.

The only point which remains to be decided is whether the Registrar, West Bengal Nursing Council could require an applicant to obtain permission from the INC before opening the Nursing College. Sections 10 and 11 of the Indian Nursing Council Act, 1947 provides for recognition of qualifications and the effect of recognition. The qualifications mentioned in Section 10 refer to parts (I) and (II) of the Schedule apply to the candidates who seek enrolment in the Nursing Courses and not to the Nursing School or College. Section 13 provides for inspection by the Council constituted under the Act namely the Indian Nursing Council (Section 2(a)) as the Executive Committee of the Council may deem fit. The Executive Committee

has been defined in Section 9 of the Act. None of the aforesaid provisions reflect any requirement of recognition/permission/affiliation of the INC before starting a Nursing College or School.

The Essentiality Certificate granted by the Directorate of Health Services to the petitioner on 15<sup>th</sup> December, 2021 read with the impugned document of the West Bengal Nursing Council dated 28<sup>th</sup> December, 2021 are clearly at variance. While the Essentiality Certificate contemplates fulfillment of certain conditions, it also says that the Certificate shall remain effective for three years. Three of the conditions refer to the teacher student ratio, equipments and furnitures and hostel accommodation which can only be shown to have been satisfied by a College once it starts functioning. Notably, the first condition of obtaining approval of the West Bengal Nursing Council resulted in the impugned communication of the State Nursing Council asking the petitioner to get the necessary permission from the INC is under challenge.

The impugned document asking for permission from INC is against the provisions of the INC Act, 1947 as stated above namely that the

Statute does not contemplate any such permission.

WPA 488 of 2022 is accordingly allowed in terms of prayer 'a'. The impugned communication dated 28<sup>th</sup> December, 2021 is set aside. The respondent No. 4 being the West Bengal Nursing Council is directed to issue necessary permission to the petitioner under the relevant Act, Rules and Regulations and permit the petitioner to participate in the ongoing Mop-up counseling. Needless to say, the petitioner's eligibility will be assessed under the relevant Act and the Rules/Regulations. The respondent No. 7 will permit the petitioner to appear for the counselling. The INC shall have the liberty of conducting inspection of the petitioner as provided under the Section 13 of the Act.

**(Moushumi Bhattacharya, J.)**