

April 6, 2022
Sl. No.2 & 3
Court No.1
s.biswas

MAT 483 of 2021
with
CAN 1 of 2021
Keya Samanta
vs.
Mousumi Bala

AND

MAT 431 of 2021
with
CAN 1 of 2021
State of West Bengal and another
vs.
Mousumi Bala and others

Mr. Kallol Basu,
Mr. Suman Banerjee, Advocates

....for the appellant
in MAT 483 of 2021

Mr. Swapan Kumar Dutta, AGP
Ms. Debjani Mitra, Advocate

... for the appellants
in MAT 431 of 2021

Mr. Indranil Nandi,
Mr. Deba Prasad Samanta,
Mr. Sayak Konar, Advocates

... for the respondents
in both appeals

Mr. Nilotpal Chatterjee, Advocate

... for the Indian Nursing Council
in both appeals

This order will govern the disposal of MAT 483 of 2021 as also MAT 431 of 2021.

In MAT 431 of 2021 the official respondents in WPA 4673 of 2020 have questioned the order of learned Single Judge dated 25.09.2020 whereby the petition has been disposed of with direction to the appellants to grant Reciprocal Registration to the writ petitioner.

MAT 483 of 2021 is directed against the order of learned Single Judge in WPCRC 25 of 2021 wherein learned Single Judge has found that the appellant had wilfully and deliberately committed the contempt of court

by not complying with the order and has also found that the apology tendered was not bona fide and imposed punishment by directing that the alleged contemnor will not be entitled to receive salary for the month of March, 2020.

The facts in a nutshell are that the respondent (writ petitioner) completed 4 years B.Sc. Nursing Course from Rajiv Gandhi University of Health Sciences, Karnataka and was registered with the Karnataka State Nursing Council, having Certificate of Registration dated 7th February, 2019. She had applied for Reciprocal Registration in the West Bengal Nursing Council. No decision on the said application was taken. Hence, she had approached the writ Court seeking a writ of mandamus against the appellant No.2 herein to grant Reciprocal Registration under the West Bengal Nursing Council. Learned Single Judge by the impugned order dated 25.09.2020, taking note of the direction of the Coordinate Bench in the order dated 23.09.2020 in WPA 4673 of 2020 as also considering the earlier interlocutory order dated 17.03.2020, has directed the appellants to grant Reciprocal Registration to the writ petitioner.

The submission of learned counsel for the appellants in MAT 431 of 2021 is that the writ petitioner has not obtained the minimum marks of 50% in each theory paper in B.Sc. Nursing Course, therefore she can only get the registration in the State from where she has passed that examination and Reciprocal Registration in the State

of West Bengal is not permissible. In support of his submission, he has placed reliance upon the communication of the Joint Secretary, Ministry of Health and Public Welfare dated 23rd January, 2020 and also the marksheet of the writ petitioner indicating that in some of the theory papers she had obtained less than 50% marks and also the notification issued by the Indian Nursing Council which provides that the minimum pass marks shall be 50% in each of the theory and practical papers separately. Reliance has also been placed on Section 18 of the Bengal Nurses Act, 1934. He has also referred to the circular dated 8th April, 2019 issued by the Indian Nursing Council providing that if the conditions for admission to the Nursing Course and the Scheme of examination for the INC recognised Nursing Qualifications are not in conformity with the regulations notified by INC, then the candidates possessing such qualifications shall be entitled to be registered in that State only where the University/Examining board is situated.

Learned counsel for the appellant in MAT 483 of 2021 has also advanced the similar argument and has also placed reliance upon the Division Bench judgment of the Andhra Pradesh in the matter of *Indian Nursing Council, New Delhi vs. Venkateswara School of Nursing, Chittoor District and others* reported in 2001 SCC Online AP 718 in support of his submission that if any change in

minimum qualification is to be done then the same procedure is required to be followed.

Learned counsel for the Indian Nursing Council referring to the communication dated 23.01.2020 has submitted that the West Bengal Nursing Council is keeping the application of the candidates obtaining below 50% marks in each theory paper pending whereas they are required to decide it.

Learned counsel for the respondent (writ petitioner) has referred to the marks obtained by the writ petitioner in the 4 years B.Sc. Nursing Course and submitted that after issuance of the circular dated 8th April, 2019 there is a change in the regulation and that the new regulations namely Indian Nursing Council (Nurses Registration & Tracking System) Regulations, 2019 have been notified on 7th May, 2019 and in terms of Regulation 6, Reciprocal/Transfer of Registration is required to be done and the regulation does not provide for any minimum marks for Reciprocal/Transfer of Registration.

Having heard learned counsel for the parties and on perusal of the record, it is noticed that learned Single Judge while passing the impugned order has not examined the issue on merit. While passing the order, learned Single Judge has placed reliance upon the order of the Coordinate Bench dated 23.09.2020 passed in WPA 4675 of 2020, a copy thereof has been produced before us. On perusal of the said order, we find that relief in that case was granted to the writ petitioner on account of

unexplained inaction on the part of the concerned official respondents and for non-compliance of the interim direction contained in the order of the Coordinate Bench dated 17.03.2020. Hence, the order impugned as also the order on which learned Single Judge has placed reliance upon both do not examine the issue on merit.

Perusal of the impugned order further reflects that in the earlier interim order dated 17th March, 2020 there was a direction for granting Provisional Registration whereas learned Single Judge has directed to grant the Reciprocal Registration without examining the issue on merit.

In the above circumstances we are of the opinion that the impugned order dated 25.09.2020 cannot be sustained and be set aside.

Since it has been brought to our notice that an application filed by the writ petitioner for Reciprocal Registration is still pending before appellant No.2 in MAT 431 of 2021, we are of the opinion that the competent authority must examine and decide the application of the writ petitioner for grant of Reciprocal Registration in accordance with law. If appellant No.2 reaches to the conclusion that the writ petitioner is not entitled for the Reciprocal Registration, then he is expected to pass the detailed reasoned speaking order.

The appellant No.2 is directed to take appropriate decision on the pending applications as expeditiously as possible preferably within a period of 4 weeks from today.

So far as the MAT 483 of 2021 is concerned, the submission of learned counsel for the appellant is that the appellant could not comply with the order of learned Single Judge because the relevant regulation requiring 50% minimum marks was coming in the way and that the appeal was preferred against the order of learned Single Judge.

Since we have set aside the order of learned Single Judge, we are of the opinion that, in the circumstances of the case, the conclusion reached by learned Single Judge that the appellant in MAT 483 of 2021 had wilfully and deliberately committed the contempt cannot be sustained and is hereby set aside.

Hence, MAT 483 of 2021 and connected application are allowed and MAT 431 of 2021 is disposed of and connected application being CAN 1 of 2021 filed in MAT 431 of 2021 for stay is rejected and dismissed accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]