

07-24.
18.8.2022
A.B./S.D.

WPA 11494 of 2022

Gitanjali Foundation

Vs.

The State of West Bengal & Ors.

With

WPA 11495 of 2022

Rangamati Unnayan Trust

Vs.

The State of West Bengal & Ors.

With

WPA 11499 of 2022

Mother Teresa Charitable Trust

Vs.

The State of West Bengal & Ors.

With

WPA 11568 of 2022

Durgapur Society of Management Science & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 11589 of 2022

National School of Management Studies Durgapur Chapter & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 11593 of 2022

Swadhin & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 11602 of 2022

Midnapore District Council for Social Welfare & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 12204 of 2022

Upasam Nursing Academy

Vs.

The State of West Bengal & Ors.

With

WPA 12489 of 2022

Md. Fahim Shakil Educational Trust & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 16648 of 2022

Tagore Mission International Education Trust

Vs.

The State of West Bengal & Ors.

With

WPA 16755 of 2022

Skylark Private Trust
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17263 of 2022
 Darshan Institute of Engineering & Management
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17266 of 2022
 Radha Krishna Educational Charitable Trust
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17806 of 2022
 Duars Charitable Trust
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17808 of 2022
 National Centre for Development of Technical Education
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17845 of 2022
 National Nursing Institute (Male) & Ors.
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 17847 of 2022
 Murshidabad Nursing Institute (Male) & Ors.
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 18125 of 2022
 Raiganj Nightingale Institute of Nursing Sciences.
 Vs.
 The State of West Bengal & Ors.
 With
Jalpaiguri Matters
 WPA 2192 of 2022
 Nivedita Foundation
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 2193 of 2022
 Sister Nivedita Public Charitable Trust
 Vs.
 The State of West Bengal & Ors.
 With
 WPA 2201 of 2022
 Manna Chowdhury
 Vs.
 The State of West Bengal & Ors.

Mr. Probal Mukherjee,
Ms. Shebatee Datta

...For the Petitioners in WPA 11494 of 2022,
WPA 11499 of 2022, WPA 11495 of 2022,
WPA 11568 of 2022, WPA 11589 of 2022
WPA 11593 of 2022 & WPA 11602 of 2022

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WPA 17847 of 2022

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Mr. Tapan Datta Gupta,
Mr. Parvej Anam

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WPA 18125 of 2022

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WPA 16755 of 2022
WPA 17806 of 2022
WPA 17808 of 2022
WPA 2192 of 2022
WPA 2193 of 2022

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...For W.B.U.H.S.

Mr. Nilotpall Chatterjee

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...For the State in WPA 11494 of 2022

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Mr. Swapan Kr. Datta,
Mr. Dipankar Das Gupta

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17263 of 2022

Mr. Swapan Kr. Datta,
 Mr. Pradyot Kumar Das
 ...For the State in WPA 18125 of 2022

Mr. Raja Saha,
 Mr. B. Basu Mullick,
 Mr. Sayan Ganguly
 ...For the State in WPA 11568 of 2022

Mr. Rajarshi Basu,
 Mr. Parikshit Goswami
 ...For the State in WPA 11589 of 2022

Mr. Swapan Kr. Datta,
 Mr. Pradyot Kr. Das
 ...For the State in WPA 11593 of 2022

Mr. Jahar Dutta,
 Mr. Bipin Ghosh
 ...For the State in WPA 12204 of 2022

Mr. Swapan Kr. Datta,
 Mr. Rajat Dutta
 ...For the State in WPA 11602 of 2022
 & WPA 12489 of 2022

Ms. Chama Mookherji,
 Mr. Gourav Das
 ...For the State in WPA 11495 of 2022

Mr. Santanu Kumar Mitra,
 Mr. Subhabrata Das
 ...For the State in WPA 16648 of 2022

Mr. Ziaul Islam,
 Mr. Abdus Salam
 ...For the State in WPA 16648 of 2022

Since common facts are involved in these writ petitions,
 they are taken up for hearing together and disposed of by this
 common judgment and order.

The facts involved in these writ petitions are not
 disputed by the parties before this Court. The writ petitioners
 are different nursing institutions for general nursing and
 midwifery ("GNM" in short) and B.Sc. (Nursing) Courses.

All the institutions have obtained the Essentiality Certificate from the Director of Health Services, West Bengal for the said courses and they have also permission from West Bengal Nursing Council for the said purpose.

The institutions also have affiliation with the West Bengal University of Health Sciences.

It is the common grievance of the writ petitioners that for the academic year 2022-23, their names have not been included by the State in the Seat Matrix for B.Sc. (Nursing) Course and G.N.M. Course.

The State justifies its stand by filing an affidavit which suggests that the writ petitioners have failed to obtain necessary recognition from the Indian Nursing Council under Section 10 of the Indian Nursing Council Act, 1947.

It has further been suggested by the State that the statutory inspection in the said institutions by the Indian Nursing Council revealed certain deficiencies and writ petitioners have failed to obtain recognition from the INC under Section 10 of the Indian Nursing Council Act, 1947 after curing such deficiencies before the date of publication of the Final Seat Matrix for the B.Sc. Nursing Course and GNM Course Counseling for the Academic year 2022-2023.

Section 10 of the Indian Nursing Council Act, 1947 provides for recognition of qualifications. The said Section is quoted below:-

10 Recognition of qualifications:-

(1) For the purposes of this Act, the qualifications included in 15 [Part I of] the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the States 16 [* * *] which, being recognised by the State Government 17 [in consultation with the State Council, if any] for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, 18 [auxiliary nursing midwifery], health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority 19 [in any 20 [territory of India to which this Act does not extend] or foreign country] which by the law of 21 [such territory] or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any 22 [such territory] or country, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act:

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice 23 [of the foreign country] in which the qualification is granted persons domiciled or originating 24 [in India] and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession 25 [in that country]

Provided further that-

(i) any reciprocal arrangements subsisting at the date of the commencement of this Act between a State Council and any authority outside India for the recognition of qualifications shall, unless the Council decides otherwise, continue in force, and

(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement, and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.]

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply mutatis mutandis to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.

A bare perusal of Section 10 does not indicate that it speaks of recognition of the training institutions for B.Sc. (Nursing) Course and G.N.M. Course. It speaks of recognition of qualifications included in Part-I and Part-II of the schedule

to the said Act. The Schedule to the said Act, in fact, recognizes the certificates, diplomas or degrees in Nursing issued by the authorities mentioned therein.

The said Schedule makes it clear that a training institution needs not to be recognized in terms of Section 10 of the Indian Nursing Council Act, 1947.

Insofar as the suitability of the institutions is concerned, it is also admitted position that the inspections have been carried out by the Indian Nursing Council in the said institutions in terms of Section 13 of the Act. The Council has pointed out certain deficiencies. The writ petitioners suggest that the institutions are in the process of curing the defects and in some cases the defects have already been cured.

The Indian Nursing Council in its affidavit, however, has clarified its stand with regard to the inclusion of the writ petitioners/training institutions in the Seat Matrix. It will be useful to quote the relevant paragraphs of the affidavit affirmed on behalf of the Indian Nursing Council.

“3. That this Hon’ble Court, vide solemn order dated 03.08.2022, had directed the answering Respondent to clarify whether the Petitioner institutions should be allowed to be included in the seat matrix for the joint entrance test for nursing, para medical and allied sciences undergraduate exam, 2022.

It is stated that in terms of Section 13 and 14 of the Indian Nursing Council Act, 1947, the Council had conducted the inspection of the said institutions. That certain deficiencies pertaining to inadequate clinical facilities and teaching faculty were found. It is submitted that the colleges are well aware of the minimum standards prescribed by the Council in the syllabus of each course. Despite this, serious deficiencies such as low bed occupancy were found in the parent hospital of the Petitioner institute. The said deficiencies were also communicated to the college. However, instead of rectifying the deficiencies, the Petitioner has approached this Hon'ble Court. The process as provided under Section 13 and 14 has still not concluded.

It is clarified that in terms of the aforesaid sections, the compliance report is examined in detail. Thereafter, only the action as provided under Section 14 of the INC Act is invoked against the defaulting institution, if required. Till date the Council has not initiated any action as provided under Section 14 of the INC Act in the present case. In other words, no declaration has been passed yet under Section 14 which provides any person holding a recognised qualification whose period of training and study preparatory to the grant to him of the qualification was passed at the institution which does not satisfy the requirements of the Indian Nursing Council in terms of Section 14(1)(b) shall be entitled to be registered only in the State in which the institution is situated.

4. That the state authority being the competent authority to grant recognition/permission to a college is entitled to reject such permission or prevent any college to take admission, in order to maintain the standards of education. It is stated that a state authority, for granting permission, may impose any condition, in accordance with their rules and regulations, to ensure that all the colleges are maintaining the minimum standards as required under the relevant laws. In the present case the rules and regulations of the Council does not provide that a college cannot participate in the counselling till the suitability certificate is issued by the Indian Nursing Council.”

The Indian Nursing Council has, therefore, made it clear that pending consideration of the suitability of the training institutions does not stand in the way of inclusion of their names in the Seat Matrix for the relevant academic year until and unless an appropriate order is passed under Section 14 of the Indian Nursing Council Act, 1947.

Therefore, I find no reason not to include the writ petitioners in the Seat Matrix for the academic year 2022-23. The grounds as mentioned by the State in its affidavit are not sustainable.

Accordingly, I direct the State to include the names of the writ petitioners in the Seat Matrix for the B.Sc. (Nursing) Course as well as for the G.N.M. Course for the academic

year 2022-23. They will be allowed to participate in the ongoing counselling process for the said academic year, if necessary, by extending the scheduled date for counselling.

Insofar as the B.Sc. Nursing course is concerned, unfortunately, it has been noticed by this Court that the West Bengal University of Health Sciences, to which the writ petitioners are affiliated, is not included in the schedule of the Indian Nursing Council Act, 1947. Therefore, the degree of West Bengal University of Health Sciences cannot be said to be a recognized qualification within the meaning of Section 10 of the Indian Nursing Council Act, 1947.

It will be open for the West Bengal University of Health Sciences to approach the Indian Nursing Council for inclusion of its name in the schedule to the Indian Nursing Council Act, 1947, and for granting recognition in terms of Section 10 of the said Act. If such prayer is made, the Indian Nursing Council Act shall consider the same in accordance with law. If the Indian Nursing Council decides that the degree of the West Bengal University of Health Sciences cannot be given recognition under Section 10 of the Indian Nursing Council Act, 1947, for any reason whatsoever, the admission in B.Sc. Nursing Course in the institutions will not

create any equitable right in favour of the students admitted in terms of this order.

This order, insofar as it relates to the B.Sc. (Nursing) Course, has been passed only as and by way of interim measure subject to the decision taken by the Indian Nursing Council with regard to the recognition of the qualification of West Bengal University of Health Sciences.

With the aforesaid observations, all the writ petitions are disposed of.

Parties shall act upon the server copy of this order downloaded from the official website of this Court.

(Kausik Chanda, J.)