

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1012 WRIT PETITION NO.11442 OF 2022

TRIMURTI SHIKSHAN PRASARAK MANDAL'S, LATE MAHALING SWAMI
NURSING SCHOOL, THROUGH ITS SECRETARY
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

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Mr. S. S. Thombre, Advocate for Petitioners.

Mr. S. G. Sangle, AGP for Respondent Nos.1 & 2.

Mr. M. D. Narwadkar, Advocate for Respondent Nos.3 & 4.

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CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 18th November, 2022.

Per Court:

1. The petitioner / management has approached this Court
with the following prayers :-

“(B) By issuing a writ of mandamus, orders, directions or any other appropriate writ in the like nature, direct Respondent No.3 and 4 to accept the examination forms with fees of those 16 students of the petitioner institution to enable them to appear for 2nd year ANM programme examination, which are commencing from 22.11.2022; or in the alternative, direct the respondent Nos. 3 and 4 to make available an on-line link open through which, the petitioner institution can submit the examination forms and fees of its students, and for

that purpose, issue necessary orders;

- (C) By issuing a writ of mandamus, orders, directions or any other appropriate writ in the like nature, direct Respondent No.3 and 4 to permit and allow the 16 students of the petitioner institution to appear for 2nd year ANM programme examinations, scheduled to be commenced from 22.11.2022, and for that purpose, issue necessary orders;
- (D) Pending hearing and final disposal of this writ petition, direct Respondent No.3 and 4 to accept the examination forms with fees of those 16 students of the petitioner institution to enable them to appear for 2nd year ANM programme examination, which are commencing from 22.11.2022; or in the alternative, direct the respondent Nos. 3 and 4 to make available an on-line link open through which, the petitioner institution can submit the examination forms and fees of its students, and further allow and permit the students of the petitioner institution to appear for 2nd year ANM programme examination, scheduled to be commenced w.e.f. 22.11.2022, and for that purpose, issue necessary orders;"

2. On Advocate's intimation, the learned advocate representing the Maharashtra State Board of Nursing and Paramedical Education, through its Director, Directorate of Medical Education and Research, has appeared in this case. He also represents the

Registrar of the Board, respondent No.4. The learned AGP appears on behalf of respondent Nos.1 and 2.

3. The issue is as regards permitting validly inducted / admitted students for the second year regular batch examinations, which is to commence on 22nd November, 2022. This petition was filed on 16th November, 2022 and was granted circulation.

4. There is no dispute that the 16 students at issue, have been validly admitted to the ANM programme conducted by the Nursing Council, Maharashtra State Board of Nursing and Paramedical Education. The petitioner, admittedly, has an intake capacity of 20 seats for the academic year 2021-22. The petitioner admitted 16 students and 4 seats have gone vacant. The 16 students have already cleared their first year examination and are scheduled to appear for the second year regular batch examinations.

5. The learned advocate for the petitioner further submits that the Principal of the college was to submit on-line forms of these 16 students so as to enroll them for the examination. Respondent Nos.3 and 4 authorities had announced the schedule for the on-line examination from 4th October, 2022 to 8th October, 2022. Admittedly, the Principal of the college did not upload the on-line examination

forms alongwith examination fees of the 16 students.

6. The learned advocate representing the authorities submits that the petitioner and identically placed colleges were intimated on 11th October, 2022 on-line that the time for filling up the on-line examination forms was extended for the period 17th October, 2022 till 19th October, 2022 (both days inclusive). Yet, the petitioner / management did not upload the examination forms of these students. The learned advocate for the authorities further submits that, as a one more chance, the web portal was opened and made available to the colleges, who missed out uploading examination forms earlier, for the whole day on 3rd November, 2022 upto 12:00 midnight. Yet, the petitioner / management did not tender the on-line examination forms of these 16 students. It is beyond doubt that one of the students are at fault as it is not within their ambit to tender their own forms.

7. It is brought to our notice by the learned advocate for the authorities as well as on behalf of the petitioner that since the results of the reevaluation cases were delivered belatedly, the authorities once again extended the period for tendering on-line examination forms from 9th November, 2022 to 12th November, 2022 (both days inclusive). Yet, the petitioner / management did not initiate steps to tender the on-line forms of these 16 students. The learned advocate for the

authorities submits that the management has wasted four opportunities of uploading examination forms of these 16 students and appears to have been in deep slumber.

8. The learned advocate for the petitioner submits that an attempt was made by the management to tender the on-line forms after 3rd November, 2022. Since the portal had closed, an attempt was made to tender off-line forms. The respondents authorities did not accept the off-line forms since the schedule mandated submissions of on-line forms and the third extended date was 3rd November, 2022, on which the petitioner did not upload the forms.

9. It is thus, obvious that it is the petitioner / management, who can alone be blamed for having failed in uploading examination forms of 16 students. However, it cannot be ignored that none of these 16 students are at fault and none can be blamed. On account of the management's conduct, these 16 students would lose one valuable academic year. All of them are girl students and are pursuing the Nursing and Paramedical Education.

10. The learned advocate for the authorities submits that as the examination is now scheduled on 22nd November, 2022, it would be impossible for the authorities to make arrangements for accepting

examination forms of these 16 students, allotting an examination center and ensuring that the question papers and answer sheets reach such examination center before the first exam on 22nd November, 2022 at 11:00 am.

11. In these circumstances, it is quite apparent that it is the management alone, which can be blamed. The career of the students insofar as one academic year is concerned, is likely to be lost. It is in these peculiar circumstances and especially in the backdrop of the fact that all these students have been validly admitted, they have cleared their first year examination, they have undergone the educational curriculum to appear for the examination on 22nd November, 2022 and are not at fault to the extent of the management not uploading their on-line examination forms, that we are favourably considering this petition.

12. It is in these circumstances that this petition is allowed with the following directions:-

- A) The petitioner / management shall deposit costs of Rs.5,00,000/- (Rupees Five Lacs only) with the Maharashtra State Board of Nursing and Paramedical Education within 15 days from today.

- B) The said amount shall be deposited from the account of the petitioner / college and none of the students would be compelled to contribute for depositing the said amount.
- C) Since the petitioner contends that all the forms are ready to be uploaded on-line or scanned or e-mailed to respondent Nos.3 and 4, we permit the petitioner / management to immediately scan all the examination forms and e-mail them to respondent Nos.3 and 4 alongwith requisite fees, upto 07:00 pm today.
- D) In the event, respondent Nos.3 and 4 can temporarily make the portal available, it may intimate the petitioner accordingly and in which case, the petitioner can also upload the forms through such portal alongwith requisite fees.
- E) Since this order has been dictated in open Court in the presence of the learned advocates for the respective sides, the parties shall act accordingly without waiting for the order to be uploaded on the official web-site of the Bombay High Court.

F) After the forms are received alongwith requisite fees, respondent Nos.3 and 4 would make arrangements to enable these 16 students to appear for the examinations scheduled on 22nd November, 2022 by issuing admit cards, on-line.

13. We appreciate the gesture of the learned advocate Shri Narwadkar, who has appeared in this matter on behalf of respondent Nos.3 and 4 on Advocate's notice and has extended cooperation in the hearing of this matter.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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