

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.7857 OF 2019 &
WMP.NOS.8486 & 8488 OF 2019 & 6641 & 6647 OF 2022

R.Usharani

...Petitioner

Vs

- 1.The Secretary to Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
- 2.The Secretarty to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George, Chennai-9.
- 3.The President,
Indian Nursing Council,
Combined Council Building,
Kotla Road, Temple Lane,
New Delhi - 110 002.
- 4.The President,
Tamil Nadu Nurses and Midwives Council,
No.40, Jayaprakash Narayanan Maligai,
Santhome High Road, Chennai - 4.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records Letter Ref.No.F.No.22-10/NUID/2014-INC, 8.9.2015 issued by the 3rd respondent and consequential circular instructions issued in Ref.No.4571/NC/2018, dated 28.06.2018 by the 4th respondent and quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.R.Kamaraj

For Respondents : Mr.B.Ramprabu,
Additional Central Government
Standing Counsel - R1

Mr.D.Ravichander,
Special Government Pleader - R2

Mr.M.S.Krishnan, Senior Counsel
for Mr.B.Deepak Narayanan - R3

Mr.R.Thomas - R4

O R D E R

The petitioner is a registered Nurse and Midwife with the Tamil Nadu Nurses and Midwives Council, Chennai (in short 'State Council'/'R4'). She had originally challenged letter dated 08.09.2015 issued by the Indian Nursing Council (in short, 'INC'/'R3') and consequential circular instructions dated 28.06.2018 issued by R4.

2. The aforesaid impugned communications of R3 and R4 were assailed on the ground that the process that has been initiated for formulation of a national live register of nurses is improper. Pending writ petition, the Indian Nursing Council (Nurses Register and Tracking System) Regulations, 2019 have come to be gazetted and the prayer has been amended by the petitioner, who now seeks a quash of notification No.149, dated 07.05.2019 notifying the aforesaid regulations.

3. Though the Writ Petition has been filed by an individual registered nurse, the attack is mounted effectively and for all practical intents and purposes, by R4. The Madras Nurses and Midwives Act, 1926, subsequently amended to read Tamil Nadu Nurses and Midwives Act, 1926 (in short 'State Act') provides for the registration of Nurses, Midwives, Health Visitors, Auxiliary Health Midwives or Dhais (in short, 'AHM') in Madras.

4. Section 5 provides for the registration of Nurses, Midwives, Health Visitors and Auxiliary Nurses, and Midwives. A register is maintained by State Council in this regard. The registration and all aspects of employment are regulated by the State Council and learned Counsel for R4 would be at pains to point out that the State enactment is a complete code by itself.

5. Though this writ petition has been preferred ostensibly by one of the members of the State Council, it appears quite clear to the Court that it is the State Council itself which is contesting the matter, as it apprehends an inroad into its powers and functions by the INC. For ease of reference, the subject matter of the membership of INC and the State Council, though comprising of nurses, AHMs and LHVs, is cohesively and for the purposes of this writ petition, referred to simply as 'nurses'.

6. The grounds of challenge are as follows:

(i) that INC does not have any authority, either statutory or otherwise, to regulate the working of the nurses in the State and their registration on a centralized basis;

(ii) that the registration of the nurses falls within the exclusive domain of the State Council in terms of Section 5 of

the 1926 Act and the impugned notification constitutes an interference in its statutory function;

(iii) that the impugned notification vests the power to register nurses in the INC, which is contrary to the State statute, impinging upon the regional autonomy of the State;

(iv) that likewise, imposition of punishment upon erring nurses is also a function of the State Council and no such power vests in the INC;

(v) The power of removal and regulation of their employment constitutes a statutory function of the State Council alone;

(vi) that the purpose of the 1926 Act is to decentralize, instead of which the impugned notification centralizes power with the INC, with the sole intention of eroding the authority of the State Council.

(vii) that the INC has corresponded directly with constituent colleges that conduct nursing courses directing them to ensure the registration of their nurses with it, (that is, the INC), under threat of punitive action for which they have no authority or statutory power;

(viii) that there have been similar attempts in the past to trespass into the statutory functions of the State Council and these have been quashed by the High Courts and the Hon'ble Supreme Court.

7. My attention is drawn to the judgment of the Hon'ble Supreme Court in Karnataka State Association of the Management of nursing and allied Health Science Institution and Others Vs. Indian Nursing Council and Others W.A.No.12759 to 12761 of 2017 dated 11.09.2017, wherein the power of the INC to grant recognition to institutions imparting nursing courses was considered.

8. The Court held categorically that INC has no such authority and cannot publish on its website materials indicating that institutions imparting nursing courses have to obtain recognition from INC. There was a specific bar that was laid as against the INC in this regard.

9. The arguments of the petitioner and the State Council are aligned. Per contra, the INC would point out that the impugned notification is only intended to streamline the process of registration and provide electronically for a live register. No new condition/power was created as the Rules already provided for the maintenance of a central register that was to be updated on an annual basis. Thus, the maintenance of a nurses register was already a part of the statutory scheme and the impugned notification merely updates such maintenance, technologically.

10. Attention is drawn to para 15A of the Indian Nursing Council Act, 1947 (Central Act) which provides for the

maintenance of a Indian Nursing Register (INR). Section 15B states that twenty (20) printed copies of the State Register are to be forwarded to the INC every year, taking note of changes/modification/ additions to the Register from time to time. The Central Council is thus statutorily required to be intimated periodically of the nurses population in the country by all State councils.

11. The impugned notification now provides for running the process electronically, as a result that Sections 15A and B will now have a virtual application. With this, practical considerations and difficulties, both at the State and Central levels, involving delay in communicating changes in the Register will stand mitigated. The result will be increased efficiency in the maintenance and updation process.

12. Learned senior counsel, on instructions from the learned counsel for the INC, makes it clear that the maintenance of the live register does not obviate the existence or maintenance of a physical register but only supplements it. As regards the communication of INC with the constituent colleges, he would agree that such acts do constitute an excess of authority by individuals within the Central Council and are not endorsed by the INC. He would agree that such communications must, and will be avoided in future.

13. The process culminating in the impugned communication did not take place overnight and was gradual. It was preceded by several rounds of meetings wherein all the State Councils had been represented. He specifically draws attention to minute of meeting convened on 05.10.2016 wherein the representative of the Tamil Nadu State Council has also participated and its views taken note of.

14. Thus, there is no merit whatsoever in this writ petition and the effort to frustrate a bonafide move to streamline the existing system must not be encouraged or allowed. He would thus pray that this writ petition be dismissed.

15. Having heard the learned counsels, the following unambiguous positions emerge. The Indian Nursing Council has been constituted in terms of Section 27 of the Central enactment with the following objects:

Whereas it is expedient to constitute an Indian Nursing Council in order to establish a uniform standard of training for nurses midwives and health visitors.

16. The State Regulating Council has been enacted under the State Act, though the Central Act provides for constitution of a

regulatory body at the level of the State as well. The roles, responsibilities and functions of the INC and State Council are separate, well-defined and distinct.

17. The above position has been settled by the judgment in the case of Karnataka State Association of the Management of nursing and allied Health Science Institution and Others (supra). The only situation where an overlap of activity between the Central and the State Council is statutorily envisaged, is in relation to the maintenance of the nurses register, as provided for under Sections 15A and B.

18. This is a conscious overlap intended to ensure that while the registration of nurses is a State function, the Central is kept fully appraised of the nurses population pan India qua each State, and to monitor their movement throughout the country. Sections 15A and B are extracted below:

15A. Indian Nurses Register.--(1) The Council shall cause to be maintained in the prescribed manner a register of nurses, midwives, auxiliary nurse-midwives and health visitors to be known as the Indian Nurses Register, which shall contain the names of all persons who are for the time being enrolled on any State register.

(2) It shall be the duty of the Secretary of the Council to keep the Indian Nurses Register in accordance with the provisions of this Act, and from time to time, to revise the register and publish it in the Gazette of India and in, such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872) and may be proved by a copy published in the Gazette of India.]

15B. Supply of copies of State registers. --Each State Council shall supply to the Council twenty printed copies of the State register as soon as may be after the 1st day of April of each year and inform the Council.

19. That apart, the scheme of the Central Act is very clear in regard to what the other functions of the INC are. Section 10 provides for recognition of the qualifications of nurses, however only by the State for the purposes of formulating the State Council, and Section 11 provides for the recognition of nurses in the State register.

20. Section 11 continues this mandate by setting out the effect of recognition in the State register and Section 12 endorses power to the INC to call upon the State Councils to

furnish information as may be required from time to time in connection with the courses of study, training and examination conducted by an affiliated institution.

21. The power is very specific in that such queries may be addressed only to the State Council and not to the Institutions themselves, which is the reason why INC does not condone the act of its officials in communicating with the Institutions directly and soliciting information from them under threat of levy of penalties.

22. Though INC is vested with the power of inspection of any Institution in order to examine and ensure that its standards are being maintained as well as for purposes of conduct of examinations, read with Section 12, it is clear that such power will have to be exercised by the INC in tandem with the State Councils only. Reports formulated by the Inspectors pursuant to such inspections are to be supplied to the Central as well as the State units, as well as the concerned Institution.

23. Section 14 provides for the withdrawal of recognition granted to an Institution, if it appears to the Executive Committee of the INC that the Institution does not satisfy the requirements of the Council. However, such de-recognition is only through the State, as provided for in Clause b of Section 14 which states that if the INC feels that the Institution does not satisfy such requirements, then a complaint is to be forwarded by the INC to the concerned Government, and the latter shall thereafter forward the complaint with its remarks to the State Council, calling for an explanation in regard to the deficiencies.

24. Upon receipt of the explanation, enquiry shall be conducted and proceedings taken to a logical conclusion. It is thus clear that the role of the INC covers those areas relating to quality control of Institutions, teaching of nursing courses, recognition and de-recognition. Its purpose is to establish a uniform standard of training for nurses and its functions and responsibilities are restricted to, and in furtherance of these objects alone.

25. To this end, and as fairly stated by learned senior counsel on instructions, the attempts of the INC to correspond and communicate directly with Institutions Tamil Nadu for any purpose, barring the aforesaid purposes, constitutes an excess of authority. The argument of the petitioner and the State Council in this regard are accepted.

26. The impugned notification is, in my considered view, only to upgrade/update the technology for maintenance of the

nurses register and I see nothing untoward in the same. The notification in Section 4 talks of the maintenance of a 'live register' and reads as follows:

Maintenance of Live Register.- The Council shall maintain the Indian Nurses Register in electronic/physical form and for this purpose enrol all categories of nursing personnel and collate the date in order to achieve the mandate of maintaining the Live Register. The process of enrolment is as follows:

(i) All Registered Nurses would ensure that their names are duly captured in the nearest available agency (health/nursing education institution/establishments) set up by the Council

(ii) Date would be entered and uploaded after Aadhar based bio-metric authentication in a online real time basis.

(iii) For this purpose the Registered Nurse would be required to submit the requisite documents such as Class X certificate or equivalent certificate authenticating the date of birth, certificates of nursing educational qualifications and SNRC registration certificate only for verification and for uploading the scanned images of certificates.

(iv) After due verifications and approval by the SNRC and on being enrolled in Indian Nurses Register, the concerned Nurses shall be provided with a Nurse Unique Identity Card (NUID) and Nurse & Midwife Register Passbook.

27. There has been no substantive amendment to the powers assumed by either the INC or the State Councils and the notification is purely a technological improvement to the existing system, a measure to keep up with the times and ensure that movement of nurses from one State to another is effectively monitored. Advancement and updation of existing systems will only benefit the system and its integrity. In a sense, it empowers all the Councils, the INC as well as the State Councils, and makes the provisions of Sections 15A and B of the Central Act dynamic and in keeping with the times.

28. The statutory provisions were designed bearing in mind available technology that required transmission of physical copies of the register from the respect State Councils to the INC. This is rendered unnecessary in the present times when technology enables both the updation as well as the transmission to be seamless and instantaneous.

29. Also and admittedly, there is substantial delay in the transmission of the registers from the State to the Centre and

it is also the case of the State Council that the registers are not being maintained systematically. In such an event, and all the more, must one take advantage of available technology as it enables their grievances to be met effectively.

30. As rightly pointed out by the INC, the efforts for an upgradation of the present system are seen to have been ongoing for the last several months and, not to the exclusion of the State Councils. Representatives of the State Councils have been invited to deliberate upon the exercise of upgradation and Dr.S.Ani Grace Kalaimathi from Tamil Nadu has participated in the deliberations.

31. In fine, a comparison of Section 4 of the impugned notification and Sections 15A and B of the Central Act do not reveal to me, any deviation or amendment to the original purpose and intent. That apart, the powers assumed by the INC for the purposes of Sections 15A and B have been in the statute from inception and the assumption of power by the INC in this regard has never been questioned by the State Councils.

32. There is thus, in my view, no justification whatsoever, for present challenge as, in sum and substance, the assumption of power by the INC remains unchanged, as far as the maintenance of a register is concerned. The impugned notification insofar as it relates to Section 4 is upheld.

33. The petitioner apprehends, and the INC agrees, that the present effort would be diminished if there are additional/unique numbers assigned to the nurses by the INC. The State councils, being the primary bodies for the registration of the Nurses, assigns a Unique number to every Nurse at the time of their registration. This shall be the only number relatable to that Nurse as the issuance of another number would only add confusion to the tracking /monitoring process.

34. The second ground of challenge relates to the fees and the penalties imposed. The Central enactment provides in Section 16 for the power to make regulations and reads as follows:

16. Power to make regulations. --

(1) The Council may make regulations not inconsistent with this Act generally to carry out the provisions of this Act, and in particular and without prejudice to the generality of the foregoing powers, such regulations may provide for--

(a) the management of the property of the Council and the maintenance and audit of its accounts;

(b) the manner in which elections referred to in sub-section (2) of section 5 and in clause (a) of sub-section (2) of section 8 shall be conducted;

- (c) the summoning and holding of the meetings of the Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (d) prescribing the functions of the Executive Committee, the summoning and holding of meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;
- (e) prescribing the powers and duties of the President and the Vice-President;
- (f) prescribing the tenure of office and the powers and duties of the Secretary and other officers and servants of the Council;
- (ff) prescribing the powers and duties of inspectors;]
- (g) prescribing the standard curricula for the training of nurses, midwives and health visitors, for training courses for teachers of nurses, midwives and health visitors, and for training in nursing administration;
- (h) prescribing the conditions for admission to courses of training as aforesaid;
- (i) prescribing the standards of examination and other requirements to be satisfied to secure for qualifications recognition under this Act;
- (j) any other matter which is to be or may be prescribed under this Act.

35. As rightly pointed out, there is no power herein providing for the levy of fee and penalty. The INC, justifies the levies provided under Sections 8(2), 9 and the Schedule, all in the impugned notification, as necessary to enhance and augment the resources of the State Councils. They confirm that no portion thereof will be appropriated by the INC. The INC also submits that the aforesaid levies are a measure to streamline the movement of nurses as, at present, nurses transition from one state to another, without there being a proper record of their transition or their present location.

36. They state that it is necessary for the INC and the State Councils to be aware at all times of the location of the registered nurses and the imposition of penalty is solely to address this requirement. Though perhaps a justified measure, there is admittedly no provision under the INC, enabling the INC to impose such levies in the absence of which such provisions are liable to set aside. The provisions in terms of which penalty is imposed are quashed for want of required authority under the Central Act.

37. This writ petition is disposed as above. No costs.
Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

Kbs/ska

To

- 1.The Secretary to Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
- 2.The Secretarty to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George, Chennai-9.
- 3.The President,
Indian Nursing Council,
Combined Council Building,
Kotla Road, Temple Lane,
New Delhi - 110 002.
- 4.The President,
Tamil Nadu Nurses and Midwives Council,
No.40, Jayaprakash Narayanan Maligai,
Santhome High Road, Chennai - 4.

+1cc to Mr.B.Ramprabu, Advocate Sr.No.24986
+1cc to Mr.B.Deepak Narayanan, Advocate Sr.No.24976
+2ccs to Mr.R.Thomas, Advocate Sr.No.24872
+1cc to the Government Pleader Sr.No.25788

W.P.No.7857 of 2019 &
WMP.Nos.8486 & 8488 of 2019 &
6647 & 6641 of 2022

SSD(CO)
RVM(19/07/2022)