

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Judgment Reserved on 08.09.2022
Date of Decision: September 13, 2022

CWP No.997 of 2022

Florence School & College of Nursing

...Petitioner

Versus

State of Haryana and others

...Respondents

2.

CWP No.999 of 2022

Florence School & College of Nursing

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Alok Mittal, Advocate,
Mr. Akhilesh Barak, Advocate
Ms. Bhawna Choudhary, Advocate and
Mr. Vishavjeet Beniwal, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana, for respondents No.1 & 3.

Mr. Amrit Paul, Advocate, for respondent No.2 (in both petitions).

Mr. Vishal Garg Narwana, Advocate, for respondent No.4.

SUDHIR MITTAL, J.

This judgment shall decide CWP No.997 of 2022 and CWP
No.999 of 2022 as the issue to be decided in both is identical even though
the courses in respect of which the writ petitions have been filed are

different. In CWP No.997 of 2022 strength of Basic B.Sc. in Nursing and Post Basic B.Sc. in Nursing is sought to be increased, whereas in CWP No.999 of 2022 increase is sought in respect of Auxiliary Nursing and Midwifery course (ANM) and General Nursing and Midwifery course (GNM).

2. For ease of reference, facts are being extracted from CWP No.997 of 2022.

3. The petitioner is a college of Nursing. Allegedly, it has a tie up with three hospitals with more than 500 beds for imparting practical training to the students. It was granted a No Objection Certificate by the State of Haryana for annual intake of 50 students for each course i.e. Basic B.Sc. Nursing and Post Basic B.Sc. Nursing. The Haryana Nurses and Nurse- Midwives Council (hereinafter referred to as the Council) granted its approval for a period of one year vide letter dated 12.01.2007. This approval was extended on an annual basis till the year 2013 as is evident from communication dated 27.06.2013 and other communications. On 13.12.2013, the Indian Nursing Council (INC) published a list of Nursing Colleges mentioning the number of students they were entitled to admit for the academic year 2013-14. The strength of courses being run by the petitioner was unilaterally reduced to 30 each. Thereafter, the Council continued to grant annual approval for the said strength. Vide communication dated 02.03.2017 issued by the INC, the strength of students to be admitted to the GNM and Basic B.Sc. Nursing Courses was increased to 40 each for the academic session 2017-18. In the same year, a bunch of writ petitions was filed in the Karnataka High Court challenging

the jurisdiction of the INC in matters regarding recognition of Nursing Colleges. Vide judgment dated 24.07.2017 passed in WP No.28383-385 of 2017 and connected cases, it was held that the INC had no authority in the matter of recognition of Nursing Institutions and was accordingly restrained from publishing material on its website which would imply that recognition was to be obtained from it. This judgment was challenged before a Division Bench of the Karnataka High Court which admitted the appeal and stayed second part of the order of the learned Single Judge pertaining to restraint on publishing of material on the website. This was challenged before the Supreme Court in Civil Appeal No.12759-12761 of 2017 which was allowed vide order dated 11.09.2017. The order of the Division Bench was set aside and that of the learned Single Judge was restored. In view of the said judgments/orders, the petitioner submitted a representation dated 26.06.2018 to the Council seeking enhancement of seats for the Basic B.Sc. Nursing Course from 40 to 50. The Council responded through communication dated 20.09.2019 stating that the petitioner had been informed vide communication dated 21.08.2018 to continue admitting 40 students only and that for increase in strength necessary consent of Pandit B.D. Sharma University of Health Sciences (University) was necessary. Accordingly, consent of affiliation was obtained from the University vide communication dated 12.01.2021 for the academic session 2020-21 as well as the next academic session. It may be noted that the consent of affiliation was for both the Basic B.Sc. Nursing Course as well as Post Basic B.Sc. Nursing Course and intake capacity specified was 50 each. Despite the consent of affiliation, the intake

strength was not increased by the Council and therefore, CWP No.24014 of 2021 titled as *Florence School & College of Nursing vs. State of Haryana and another* was filed which was disposed of vide order dated 26.11.2021 with a direction to the Council to decide the pending representation dated 26.06.2018. The representation has been decided vide order dated 03.01.2022 and the request for increase in strength has been rejected on the ground that inspections conducted from 02.05.2018 to 31.05.2018 permitted an intake of 40 students for the Basic B.Sc. Nursing Course and 30 students for Post Basic B.Sc. Nursing Course as also seats going vacant every year because of which the State Government had decided not to consider any seat enhancement. This order is under challenge in the writ petition.

4. The State of Haryana has filed a short reply stating that the dispute is between the petitioner and the Council and that the State has nothing to do with it.

5. A short reply has also been filed on behalf of the Council wherein, it has been submitted that enhancement of seats was covered under the Policy dated 07.12.2021 but the same has since been withdrawn. Fresh applications will be invited as and when a new Policy is approved and notified by the Government. The Haryana Nurses and Nurse-Midwives Act, 2017 (hereinafter referred to as the Act) has come into force and Section 25 thereof provides for recognition. The petitioner has so far not submitted any application in accordance with the said provision along with requisite fee. As and when such an application is submitted, the same shall be considered in accordance with law.

6. Learned Senior Counsel for the petitioner has argued that No Objection Certificate has been granted by the State Government keeping in view the infrastructure available. The infrastructure has also been examined by the Council and it has permitted admission of 50 students each vide its communication dated 12.01.2007. The same has been extended from time to time till the INC unilaterally reduced the intake. The order of the INC was without jurisdiction and thus, application dated 26.06.2018 was submitted to the Council for increase in the intake. Rejection of the claim is patently arbitrary because it would be preposterous to say that infrastructure that was available at the time of starting of the course has since depleted. The State Government in its reply has said that it has no jurisdiction in the matter and thus, the reason given in the impugned order that rejection is on account of decision of the State to restrict intake keeping in view wastage of seats, is patently false. The falsity is corroborated by chart Annexure P-21 which shows that a number of institutions who had applied for increase in seats for the academic session 2020-21 have been granted permission.

7. Learned counsel for the Council has argued that after the University granted consent of affiliation vide communication dated 12.01.2021, whereafter no application was filed for increase in the intake. The petitioner as member of the Haryana Nursing Institutions Association had challenged the vires of various provisions of the Act vide CWP No.12686 of 2017 wherein vide order dated 23.06.2017 members of the said association were permitted to file applications. The petitioner was inspected on 30.05.2018 and order dated 21.06.2018 was passed on the

basis thereof permitting intake of 40 students for Basic B.Sc. Nursing Course and 30 students for Post Basic B.Sc. Nursing Course. This implies that necessary infrastructure was not available and thus, order of rejection dated 03.01.2022 was passed. It is a reasonable order and does not call for any interference.

8. In rebuttal, learned Senior Counsel for the petitioner has submitted that the reason of non-availability of necessary infrastructure has not been mentioned in the impugned order and the reasons cannot be supplemented by an affidavit filed in Court. Thus, the argument regarding non-availability of infrastructure cannot be raised. Moreover, the argument is fallacious on the face of it as it would imply that necessary infrastructure available at the inception of the institution had disappeared.

9. Before proceeding further, it may be noted that application dated 26.06.2018 (Annexure P-6) in CWP No.997 of 2022 is in respect of Basic B.Sc. Nursing Course only and application of even date Annexure P-8 in CWP No.999 of 2022 is in respect of GNM Course only. However, the impugned order considers increase in intake of Post Basic B.Sc. Nursing Course as well as ANM Course and thus, it is being presumed that applications were made in respect of the said courses also.

10. From the record, it is evident that the State of Haryana had granted NOC for annual intake of 50 seats each. This was reduced unilaterally by INC publishing a list dated 13.12.2013 from which reasons for reduction in strength are not forthcoming. Thereafter, the strength of the Basic B.Sc. Nursing Course was increased to 40 after conduct of physical verification as is evident from communication dated 02.03.2017

by the INC. It thus, appears that the intake capacity was reduced for no valid reason. The petitioner had been admitting students in accordance with the NOC issued by the State of Haryana in the year 2007 all along and the Council had been granting annual approval for the same strength after inspection. The record does not indicate that any complaint was received from any quarter that the infrastructure was not adequate. There is also no inspection report to the said effect. It thus, appears that the reduction in seats to 30 and subsequent increase to 40 was whimsical. Report of the inspection conducted on 30.05.2018 has not been placed on record. Only a one page inspection proforma has been placed on record as Annexure R-2/3 along with the rejoinder to the replication which does not reveal anything of relevance. Thus, the argument raised on behalf of the Council that the petitioner does not possess adequate infrastructure cannot be accepted for the reasons (a) the infrastructure installed in the year 2007 and admittedly available till 2013 could not disappear over the next five years and (b) reason of lack of infrastructure has not been mentioned in the impugned order and the reasons mentioned therein cannot be supplemented by affidavit.

11. The chart annexed as Annexure P-21 unequivocally shows that applications for increase in strength submitted by a large number of Nursing Colleges were accepted and intake capacity was increased by different numbers the largest being 80 in respect of Post Basic B.Sc. Nursing Course being conducted by BDM College of Nursing Chhuchhakwas, Jhajjar. No explanation whatsoever is forthcoming from the Council regarding the instances mentioned in Annexure P-21 and thus,

the only logical conclusion is that the Council is adopting a pick and choose policy. The petitioner has been subjected to hostile discrimination and the same cannot be condoned.

12. The State has washed its hands off the controversy by stating that it has no role to play in the matter of annual intake. Thus, attempt to take shelter behind the State, while passing the impugned order, has been revealed to be without substance.

13. In view of the above reasons, the impugned order cannot be sustained in law and is accordingly quashed. The writ petitions are allowed and the Council is directed to pass a fresh order within four weeks from the date of receipt of a certified copy of this judgment. In case, there is any grievance regarding non-payment of fees, the same may be communicated to the petitioner.

14. Since main cases have been decided, pending miscellaneous application, if any, also stands disposed of.

15. A copy of this order be placed on the file of another connected case.

September 13, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>