

WPA 2136 of 2023
Sourav Ghosh
Vs.
State of West Bengal & Ors.

Mr. Siddhartha Sankar Mandal,
 Ms. Arunima Das Sharma

...for the Petitioner

Mr. Swapan Kr. Datta,
 Mr. Tapas Kr. Mandal

...for the State

Mr. Nilotpal Chatterjee

...for INC

In this writ petition, the petitioner has challenged an order dated December 22, 2022, issued by the Registrar, West Bengal Nursing Council, whereby the benefit of reciprocal registration under the West Bengal Nursing Council was declined to the petitioner. The refusal was based on the ground that as per Indian Nursing Council Act, 1947, the institution where the petitioner obtained his qualification, was not included in the list of recognised institutions under the Indian Nursing Council. The petitioner could only be registered in his present State.

Section 14 of the Indian Nursing Council Act, 1947 is reproduced below :-

“14. Withdrawal of recognition.—(1) When, upon report by the Executive Committee, it appears to the Council—

(a) that the courses of study and training and the examinations to be gone through in order to obtain a

recognised qualification from any authority in any State or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution recognised by a State Council for the training of nurses, midwives, [auxiliary nurse-midwives] or health visitors does not satisfy the requirements of the Council,

the Council may send to the Government of the State in which the authority or institution, as the case may be, is situated a statement to such effect, and the State Government shall forward it, alongwith such remarks as it may think fit to the authority or institution concerned and, in a case referred to in clause (b) to the State Council also, with an intimation of the period within which the authority or institution may submit its explanation to the State Government.

(2) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of the period, the State Government shall make its recommendations to the Council.

(3) The Council, after such further inquiry, if any, as it may think fit to make, and in a case referred to in clause (b) of sub-section (1), after

considering any remarks which the State Council may have addressed to it, may declare,

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(a) in a case referred to in clause (a) of that sub-section, that the qualifications granted by the authority concerned shall be recognised qualifications only when granted before a specified date, or

(b) in a case referred to in the said clause (b), that with effect from a date specified in the declaration 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 concerned shall be entitled to be registered only in the State in which the institution is situated.

(4) The Council may declare that any recognised qualification granted outside the State shall be a recognised qualification only if granted before a specified date.”

Section 14 of Indian Nursing Council Act, 1947 needs to be read with Regulation 4 of Indian Nursing Council (Minimum Pre-requisites for Granting Suitability to Nursing Programs) Regulations, 2020. The said Clause (4) is quoted below :-

“4. Minimum pre-requisites {for starting GNM and B.Sc. (Nursing)}

(i) The following Establishments/organizations are

eligible to establish to establish/open a GNM School of Nursing/B.Sc. (Nursing) College of Nursing.

a) Central Government/State Government/Local Body:

b) Registered Private or Public Trust;

c) Organizations registered under Societies Registration Act including Missionary Organizations;

d) Companies incorporated under Section 8 of Company's Act.

(ii) The eligible Establishments/Organizations should have their own 100 bedded Parent Hospital is exempted.

a. Tribal area – Scheduled Notified Area {Areas as the President of India may by order declare to be Scheduled Areas};

b. Hilly area – Union Territory of Jammu & Kashmir , Union of Territory of Ladakh, North East States, Himachal Pradesh and Uttarakhand.

(iii) The eligible Establishments/Organizations should obtain Essentiality Certificate/No objection Certificate from the concerned State Government where the GNM and B.Sc. (Nursing) College of Nursing is sought to be established. The particulars of the name of the College/Nursing Institution along with the name of the Trust/Society [as mentioned in Trust Deed or Memorandum of Association] as also full address shall be mentioned in No Objection Certificate/Essentiality Certificate.

(iv) After receipt of the Essentiality Certificate/No Objection Certificate, the eligible institution shall get recognition from the concerned SNRC for the GNM & B.Sc. (Nursing) Program for the particular Academic Year, which is a mandatory requirement.

(v) The Council shall after receipt of the above documents/proposal online would then conduct Statutory Inspection of the recognized training nursing institution under Section 13 of the Act in order to assess the suitability with regard to availability of Teaching Faculty, Clinical and Infrastructural Facilities in conformity with Regulations framed under the provisions of the Act.

***Provided that training institutions shall apply for statutory inspection, under Section 13 of the Act, to the Council within 6 months from obtaining recognition from SNRC."**

The facts involved in the present case have been fairly disclosed by the Indian Nursing Council in its affidavit. The relevant paragraphs of the said affidavits are quoted below :-

" N. That with regard to the issue involved in the present petition is concerned, the petitioner has obtained his qualification from KKECS School of Nursing.

O. That upon inspection the said nursing college has been found to be unsuitable by the answering Respondent i.e. Indian Nursing Council.

P. That the Council had set a letter/notice dated 15.11.2022 to the State government of Karnataka asking for their comments with regards to withdrawal of recognition of the said college.

A Photostat copy of the notice dated 15.11.2022 is annexed herewith and marked as Annexure R-2.

Q. That the declaration as envisaged under Section 14 of the Act has not yet been passed by the Council.

R. That therefore, students passing out from the said college, as on today, cannot be prevented from registering in any other state.

S. That it also pertinent to submit that the reciprocal registration is granted by the concerned State Nursing Council.

T. That the concerned State Nursing Council, being an independent body, has the power to frame the rules with regard to grant/refusal of reciprocal registration.

U. That the West Bengal Nursing Council is the competent authority to consider the request of the petitioner in this instant proceeding.”

It is clear that the procedures as contemplated under Section 14 of the Indian Nursing Council Act, 1947 read with Regulation 4 of the Indian Council (Minimum Pre-requisites for Granting Suitability to Nursing Programs) Regulations, 2020 are yet to be completed with regard to the relevant nursing institution. The affidavit clarifies the writ petitioner should not be denied the benefit of reciprocal registration before the withdrawal of recognition by the Indian Nursing Council. The ground that the name of the institution does not figure in the recognised list of the institution of the Indian Nursing Council Act, 1947, is, therefore, premature.

Accordingly, the order dated December 22, 2022 issued by the Registrar, West Bengal Nursing Council is set aside with a direction upon the said Registrar to register the name of the petitioner under the West Bengal Nursing Council within a period of two months from the date of communication of this order.

Needless to mention that this order shall not prevent Indian Nursing Council to take appropriate step in terms of Section 14 of the Indian Nursing Council Act, 1947.

Accordingly, WPA 2136 of 2023 is allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)